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UNIVERSITY LAW COLLEGE MAGAZINE

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1950-51

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SESSION 1950-51

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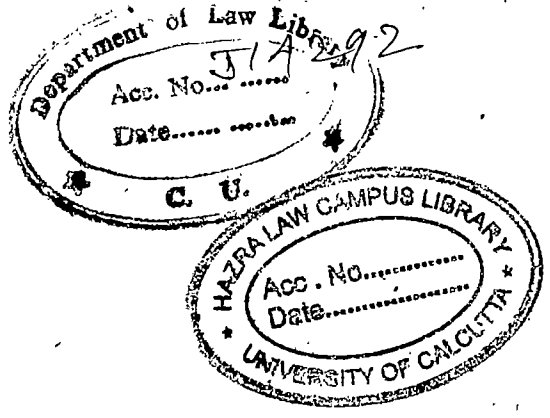
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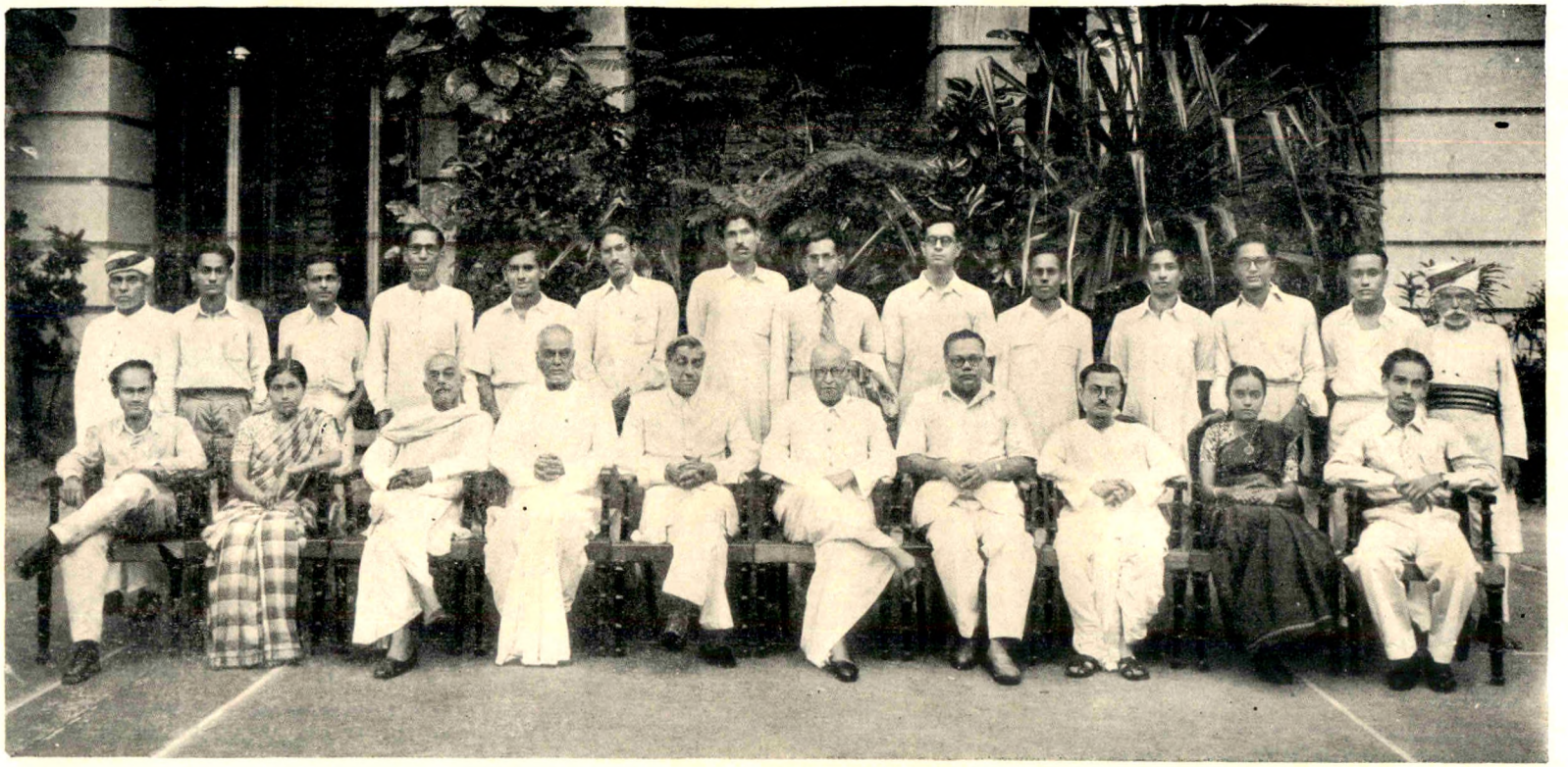

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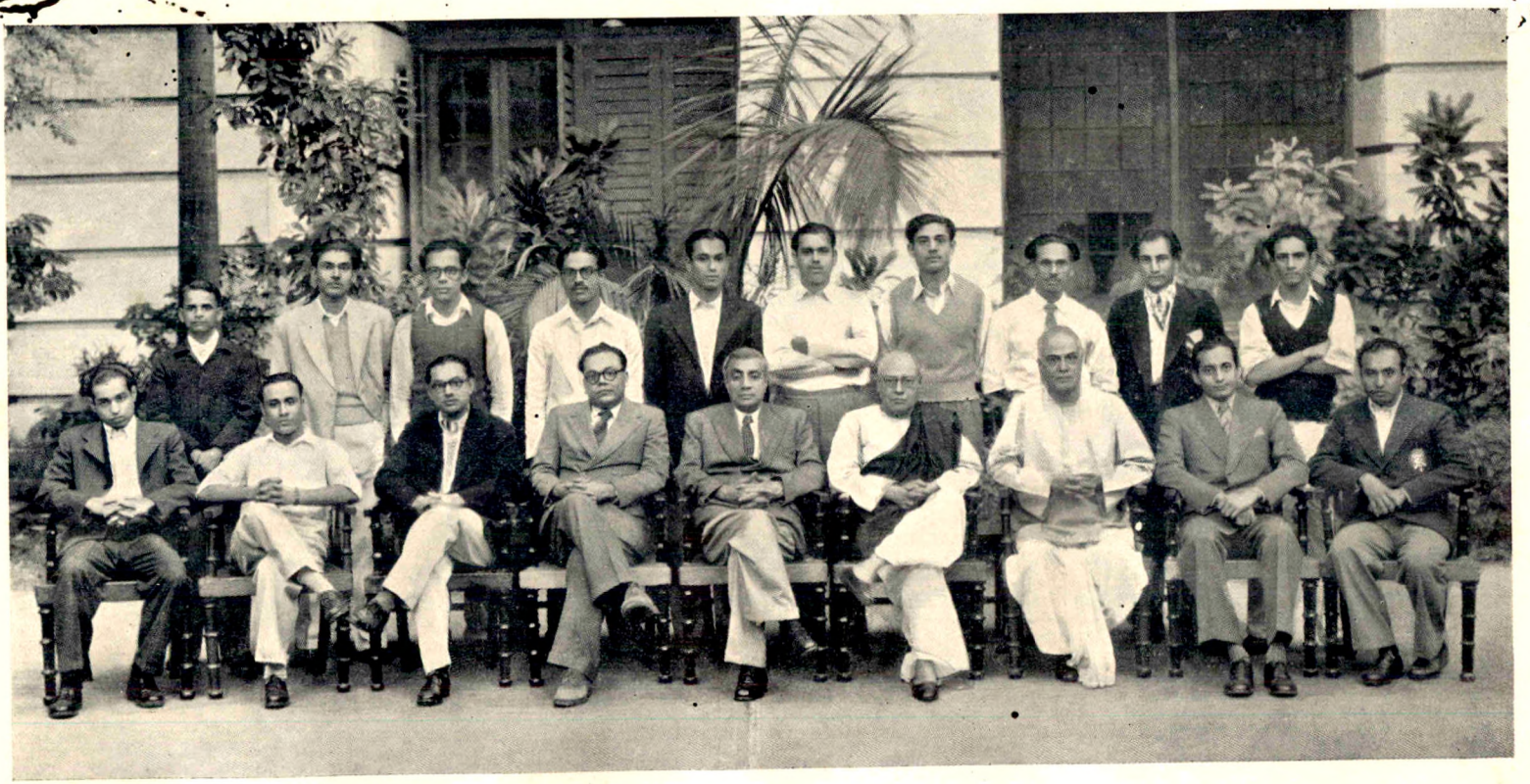

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University Law College Magazine, Calcutta

VOL. XX 1950-51

Editorial Notes

We regret the delayed publication of our college magazine. We are sorry to admit that the standard of our magazine is not quite up to the mark.

While admitting this, we should also point out that this is but unavoidable in the existing circumstances. The main difficulty in improving the standard of our magazine lies in our financial condition. With the scanty sum that we have for our magazine we cannot make any substantial improvement in the standard of our magazine inspite of all the good plans that we may have in our view.

We, therefore, suggest that a minimum sum of annas eight should be levied on each student in each session as magazine fee.

* * *

While bringing out our magazine at this time, we are having our first general election since the birth of the Republic of India.

This year for the first time, we Indians have been given the right of electing our representatives on adult franchise and we can only hope that the fittest persons would be elected in the different State Assemblies and in the House of the People.

We may also hope that those who will be so elected will prove themselves worthy of their position and strive for the real improvement of our country.

* * *

We are so glad to learn that a Committee has been appointed at the centre for recommending judicial reforms in our country. We fully admit that there are many defects in our judicial system, which usually involve a lengthy and costly procedure.

We would, therefore, request our Government to give immediate effect to the recommendations of this Committee.

* * *

The syllabus of law study of our University is about fifty years old and we feel that this back-dated syllabus should be revised immediately. Incidentally we venture to suggest that subjects like Roman Law may be excluded from the syllabus and topics like Mercantile Law in its various branches may be included in it.

* * *

Our thanks:—

We are deeply grateful to our Principal Dr. P. N. Banerjee, Vice-Principal Sri A. C. Karkoon, our President Professor R. M. Mazumdar and our Vice-Presidents Professor S. A. Masud and Professor A. C. Ganguly who helped us so much in our activities.

We are also grateful to the Superintendent, the staff and the workers of the Calcutta University Press without whose kind and cordial help the publication of this magazine would have been an impossibility. Lastly, we are grateful to our friends and colleagues and also others who have helped us so much in our activities.

ADDRESS AT THE ANNUAL LEGAL CONFERENCE

BY

HIS EXCELLENCY DR. K. N. KATJU

Having spent my life in the practice of the law I naturally love the legal profession. Under the British rule it was the only profession—in a way it was the creature of that rule—which enabled Indians to show their aptitude and skill for exposition of law and jurisprudence. As Judges they won universal admiration for their judicial probity, acumen, wisdom and independence. As Advocates they won renown for the highest forensic skill, experience and fearlessness in the discharge of their duty towards the client, and in the political sphere the lawyers played a great part in laying the foundations of, and then building, the organisation which became famous throughout the world as the Indian National Congress. It is true that inspired by the philosophy of life and political strategy of Mahatma Gandhi (who was himself a lawyer of no mean repute) the Indian National Congress took to direct action, and while lawyers continued to be the builders of modern India, paradoxically they were able to do so only when they quitted the active practice of the law. To support my statement I need only mention Chittaranjan Das, Motilal Nehru, Vallabhbhai Patel and Rajagopalachari among many others. It is needless to emphasise that while they left the Bar for the sake of politics, they could not leave behind the experience and sagacity which they had gained and imbibed in the law courts. India has now become free, and I sometimes hear comments that in this changing world there is not much room left for the legal profession. There is no future before it, it is said. It is condemned as if it were a parasite on the capitalistic structure of society. In a social welfare State many people think that lawyers have no place. I do not share this opinion. I think it is mistaken, and that it is a great error to treat the legal profession as a mere adjunct to, or product of, capitalism. The function of a lawyer is not to protect or advance the cause of a man of property. His main function is to help the citizen in safeguarding his life and liberty, and with life and liberty, of course, goes as much property as the law allows. In any political structure which is based on law, there must be an honoured place for lawyers. Indeed, Judges and Advocates must be the pillars of such a structure. Without them to keep it in proper repair and see vigilantly to its foundations, whenever so required, the edifice will soon tumble down. Of course, it is open to any people to say that they will build their political constitution not on the supremacy of the law but on the supremacy of the personal will and discretion of any particular individual or series of individuals in succession. Then it might be a different matter altogether. Then the reign of law will disappear, and the reign of discretion, arbitrary and unfettered, will commence, but Lawyers and Advocates may even so, in such an order of society, continue to discharge useful functions.

In India, however, we have chosen to abide by the reign of law. All our parliamentary institutions are built upon it. The Constitution guarantees rights and liberties to the individual citizen, and with the well-known maxim that every citizen is presumed, no matter how ignorant and even illiterate he may be, to know the entire body of law, our system cannot work even for a single day without Lawyers, Advocates and Judges keeping the machinery going. And I go farther and say that while the Indian legal profession during the last hundred years won a great name for itself, it had no genuine opportunity for real constructive service. It had no scope to show its talents for constructive statesmanship and law-making. That opportunity has now come in this free India. The existence of freedom is the prerequisite for the exercise of this noble profession in its highest form, and I suggest to every Indian young man and

woman that provided you have the aptitude for the law and you are not averse to hard work, and you resolve to observe the basic principles of righteousness and rectitude which underlie all rules of professional ethics and professional conduct, there lies, before you the brightest future imaginable. Service in Government departments or private industrial concerns and other professional and business careers leave little time for interest in politics. Only the legal profession, through its very exercise and the opportunities it offers for the widest contacts with all sections of the community, can make a citizen a good politician. I am using the word ' politician ' in its right sense as one who is interested in political welfare and in the art of self-government. It is only the lawyers who are qualified, by their knowledge and practice of the law, to become members of legislative bodies, and also with further training for Ministerships and other high offices for shouldering heavy responsibilities.

CONFLICT OF LAWS

BY

THE HON'BLE JUSTICE SRI D. N. SINHA

" Naming," said Rabindranath Tagore, " Is not explaining." When a scientist comes across natural phenomena which he cannot explain, he solemnly gives it an unpronounceable name and all is well. When a physician cannot diagnose a new disease, he attributes it to a ' Toxin ' or a ' Vitamin deficiency,' and the patient goes home satisfied. A lawyer is also not to be left far behind. It is his constant endeavour to explain the laws by rules and precedents so that he can readily solve a given problem by reference to it. But such is the diversity of human life and the variety of human conduct that a situation sometimes arises which baffles his ingenuity. He then invents a name for it which only makes confusion worse confounded. To the knowledgeable, however, it is no secret that it is a mere avoidance of the issue, the game of an escapist.

Such however is the genesis of that little known branch of law known as the ' Conflict of Laws ' or as it is better known in modern times, ' Private International Law.' If we start examining these terms, the purport of what I have just said will become clear. The name ' Conflict of Laws ' is given to a branch of law in which no conflict is really possible, and the word ' International ' makes it impossible that it should also be ' Private.' If there really exists any International law it must be ' Public International Law,' which again is not a law at all, because it is not enforced by the laws of any country but are merely moral rules which are observed by one state in its dealing with another.

The scope of this branch of law will perhaps appear from the facts of a most interesting case—*In re* Bethell (1888) 38 Ch D 220. One Christopher Bethell, an Englishman, left England for the Cape of Good Hope in the year 1878 and never returned to his native country. He settled down in Mafeking, South Africa, and ultimately died fighting with the Boers in Bechuanaland. While in Mafeking, he became friendly with an African tribe known as the Baralong. He went to the Chief and wanted to marry a Baralong woman. The chief explained to him that their customs were different from

the white man, that they permitted themselves to have many wives, although the first wife occupied the position as the chief wife. Bethell however insisted that he had adopted the Baralong customs and had become a Baralong. He then married a Baralong woman and lived with her as man and wife and had a child. He had no other wives. In an action in England after his death, the question arose whether Bethell was legally married and his issue was legitimate, both of which questions were answered in the negative. It will at once be seen that the question is incapable of solution by applying the ordinary law of England. The question is, which law to apply? The English laws of marriage according to the Christian tenets which prohibits a polygamous union, or the law applicable to the Baralongs? Had the English Court jurisdiction to decide the matter? All such questions relate to that branch of law which is called 'Conflict of Laws' or 'Private International Law.' In 'Private International Law,' said Franz Kahn, disputes start from the title page.

The term 'Conflict of Laws' was first used by Ulrich Huber in a tract (1684) *De Conflictu Legum Diversarum in Diversis Imperiis*. Professor Dicey chooses the term for his monumental work 'Conflict of Laws.'— "The name," confesses the learned author, "Is not altogether satisfactory. It covers only that part of the subject which deals with the choice of law to the exclusion of the issue of jurisdiction which is an essential part of the subject. The only possible 'Conflict' moreover is that in the mind of the Judge who has to decide which system of law to apply to the facts before him and in many cases the proper choice may be so simple that the term is quite out of place as a description of his mental attitude." Professor Holland, in dealing with the criticism that no conflict of laws really takes place since the authority of a domestic can never be displaced by that of a foreign law points out that though each state is free to adopt for the decision of any given question its own or foreign law, yet the rival claims of the various bodies of foreign law did present themselves to the Legislature or Court as competing or conflicting. "There is no strife for mastery, but there is a competition of opposing conveniences." The term 'Private International Law" was first used by story in his pioneering "Commentaries on the Conflict of Laws," which appeared in 1834. The term 'Conflict of Laws' has been used in England and America, while Story's phrase has been accepted in the continent of Europe, but the word sequence has been altered to 'International Private Law,' which is a far more satisfactory term. Hibbert uses the continental term and says "As regards the term 'Private international Law' it may be pointed out that the word 'International' immediately preceding the word 'Law' indicates the rules supposed to regulate the conduct of nations and therefore the word 'Private' is a contradiction in terms." Phillimore calls it 'Private International law or Commity,' the latter term indicating that when a state gives effect to the laws of another, it does so as an act of voluntary courtesy. But there are serious objections to the use of the word 'Comity,' since a Court can only apply the law and not a rule of courtesy. Von Barr uses the phrase 'International Private Law.' Apart from these well-known terms, there are many lesser known but fanciful terms applied to this branch of the law. Baty, a distinguished English writer, uses the phrase 'Polarized Law.' Beale says that it deals with the applications of 'laws in space.' This is explained by saying that a rule of substantive law, *e.g.*, the English rule that a simple contract must be supported by considération, has *proprio motu* no dimension in space, for according to the terms in which it is expressed it applies to all contracts wherever made. But its dimension in space, *i.e.*, its sphere of authority, is the very thing that is fixed by Private International Law. It now remains for some fanciful writer to add to this the

time element of an Einsteinian universe, to bring it up-to-date!'

It is not only in the naming of this branch of law that there is diversity. It is startling to read about the different reactions it produces in different minds. "There is a sweep and range in it" says Baty, "which is almost lyric in its completeness. It is the fugal music of law." It has been said by a distinguished French writer on the other hand, that this department of law resembles the Enquiry Office at a Railway Station, where a passanger may learn the platform at which his train starts. If for instance the defence to an action in England for breach of a contract made in France, is that the formalities required by French Law have not been observed, Private International Law ordains that the formal validity of the contract shall be determined by French Law. (Cheshire, 3rd edn., p. 10). This branch of law again is not the same in all countries. There is no one system that can claim universal recognition. Some kind of unanimity exists in the sphere of 'Public International Law,' but there is none in the case of 'Private International Law.' The Law as found in England is different to that found in France, Italy or Spain. Although there is a great deal of similarity between the system as practised in England and that practised in North America, there are differences on fundamental points. Even the law in Scotland differs from the English law, although English Authorities may be cited in Scottish Courts. The many questions relating to the personal status of a party, depend in England and America upon the law of his domicil, but in France, Italy or Spain and in most European countries upon the law of his nationality. In England the essential validity of a contract is determined by that system of law with which it had the closest connection, but in the United States it is either governed by the law of the place where the contract was made or where it was to have been performed. In fact, so conflicting are the principles applied by the various systems to a question, say like marriage, that the same two persons may be deemed to be married in one jurisdiction and not in another!

And this brings me to the real object of writing this article. What is the system that we shall follow in India? Hitherto, the law applied has been the English Law, or to be more accurate, the view of Private International Law taken by the Courts in England. After all, the ultimate determining authority hitherto, has been the Judicial Committee, and it was not to be expected that it would be governed by any other view. (See Sardar Gurudayal Singh *vs* Raja of Faridkote—(1894) A.C. 670). But the point of view of the Western world as a whole is tinged with an artificial outlook so far as non-christian countries are concerned. The existence of colonialism necessarily affected the point of view in the case of International law. In the case of *In re* Bethell, the facts of which have been set out above, it was held that the Baralonga marriage was not a valid one. Stirling J. quoted the following celebrated passage from Lord Broughham, in Warrender *vs* Warrender 2 Cl and F 488: "But marriage is one and the same thing substantially all the Christian-world-over. Our whole law of marriage assumes this, and it is important to observe that we regard it as a wholly different thing, a different status from Turkish or other marriages among infidel nations." I must state, however, that the English view has subsequently been greatly modified and a Hindu marriage is not necessarily void under the English Law. The point arose in an interesting form in the Sinha Peerage case (1946) 1 All. Eng. R. 348. Sir Satyendraprasanna Sinha, was by Letters Patent, dated February 14, 1919, granted the honour title and dignity of Baron Sinha of Raipur. After his death, his eldest son Arun Sinha claimed to receive a writ to sit in the House of Peers, being the heir male of the body of the First Baron, lawfully begotten. The Attorney-General expressed a doubt and it was referred to the Committee of privileges. Lord Maugham

delivering the opinion of the Committee said that notwithstanding some previous decision to the contrary, Hindu marriages were now recognised by English law. He however opined that the English law did not sanction polygamous marriages and the result would have been different if a person had a plurality of wives which the First Baron could not possibly have, as he had been converted to the Sadharan Brahmo Samaj, before issue of the Letters Patent. In Baindall *vs* Baindall (1946) All Eng. R. 342, the appellant was an Indian who had a wife in India but went through a form of marriage in England with an English girl, at the Holborn Registry. Lord Greene was greatly moved by the fact that the English lady upon arriving in India would have to share the same home and the same husband with her Indian counterpart. "Is it right" said the noble lord "That the Courts of this Country should give effect to a ceremony of marriage, the result of which would be to put the respondent into such a position? It seems to me that effect must be given to common sense and decency."

If these and similiar considerations are to weigh with the English Courts, it behoves us to reflect as to how far we should accept without question the English view of Private International Law. Ours is a secular state, but the religions of the majority of its inhabitants do not forbid polygamy. While we may be excuesd if our conscience refuses to be smitten by infidel marriages, we might be inclined to look a little askance at the easy dissolution of marriages in several Christian countries (*e.g.*, Incompatibility of temper). And quite apart from the law of marriage, the English view in respect of several other matters do not find support even from celebrated English jurists themselves. For, example, even a transient visit to English soil is supposed to grant jurisdiction according to Private International Law as practised in the English Courts. Chesire points out that this is a view scarcely likely to be recognised by foreign Courts.

There is therefore abundant scope for our own Jurists and students of law to evolve a School of Private International Law, not tied to the apron strings of anyone. We must use our own creative faculties, and utilising the best materials available from jurists of all schools, make our own contribution to the existing knowledge of the world on this rather abstruse subject.

THE HINDU IDOL AND THE LAW OF PROCEDURE

BY

S. C. MITTER, B.A., LL.B., BARRISTER-AT-LAW.

A Hindu Idol was once described by an eminent Hindu lawyer, perhaps in a moment of levity, as a movable property fit to be thrown into the river. When the case of Mallick *vs* Mallick[1] in the proceedings of which the Idol was so described went up in appeal before the Judicial Committee, a very distinguished Scottish Judge there disagreed. Life and spirit were infused into the Deity. And behind that doctrine so enunciated, lies the basic concept of the Divinity of the image capable of suing and being sued, of holding property through human agency.

Now then, what is the nature of such an Idol? It is not a corporation sole as understood

[1] (1925) 52 I.A. 245.

in English Law, nor is it a perpetual minor as supposed by some learned judges. The conception of a Hindu Deity is essentially religious with a juridical status and a sanctity of ages behind it and that sanctity imperishable for all ages to come. That divine Image which grips the millions of India from time immemorial proclaims to mankind that the Image is only a symbol of the Infinite in tune with the Finite. In essence and in reality, it is one entity representing one world—the world of thought. But whose thought is it? It is more than thought. It is the 'dream of that great Dreamer who weaves His own dreams' and rejoices in looking at it.

Remembering this essentially religious concept of a Hindu Deity, let us once look at the concrete realities of his position as described by Mookerjee J. in Rambrahma Chatterjee *vs* Kedar Nath Banerjee.[1]

> "We need not describe here in detail the normal type of continued worship of a consecrated Image—the sweeping of the temple, the process of smearing, the removal of the previous day's offerings of flowers, the presentation of fresh flowers, the respectful oblation of rice with flowers and water, and other like practices. It is sufficient to state that the Deity is, in short, conceived as a living being and is treated in the same way as the master of the house would be treated by his humble servant. The daily routine of life is gone through with minute accuracy; the vivified Image is regaled with the necessaries and luxuries of life in due succession, even to the changing of clothes, the offering of cooked and uncooked food, and the retirement to rest."

This narrative presents a human aspect of the Deity with its roots in the realm of spirit to which I have just referred. The person responsible for these duties to the consecrated Image is *defacto* and in common parlance called 'Shebait.' One who does the Sheba is charged fundamentally with the duty of seeing to the worship being carried on. All these considerations become important when we view the Idol as a *persona* with mundane ideas. Therefore, any argument to reduce the Idol to the position of a mere movable chattel is to go against the basic concepts of Hindu jurisprudence. If the Shebait's main duty is to see that the worship of the Deity is properly performed it is equally his duty to manage the Idol's worldly affairs. But it has to be remembered that his position is not exactly like that of a trustee as in English law. A clear exposition of his legal position is to be found discussed by their Lordships of the Privy Council in Vidyavarati's case.[1] These points become relevant while considering the law of procedure with reference to Hindu Idols. Looking 17 years back from the above decision their Lordships of the Judicial Committee in Maharaj Jagadindra's case[2] clearly laid down that the right to sue in respect of a completely dedicated property vested in the Shebait.

As time rolled by, we see the pendulum swinging another way in the history of decided cases on this subject when we come to the famous Mallick's case[3] where their Lordships introduced a different line of thought.

To cut the matter short, if we deeply think over the pronouncement of their Lordships of the Privy Council in this case and keep clearly in mind the conception of a Hindu Idol as 'Juristic entity,' then the extravagant doctrine of a Hindu Deity as a perpetual minor is knocked completely on the head. Reference may be made in this connection to the observation of Rankin, C. J. in the case of Surendra Krishna Roy *vs* Shree Shree Iswar Bhubaneswari[4] where he referred to the decision of the judicial committee in Damodar Das *vs* Lakhan Das[5] where the Deity was regarded as a legal entity. This being the

[1] (1922) 36 C.L.J. 478 (483).

[1] (1921) 48 I.A. 302.
[2] (1904) 31 I.A. 203.
[3] (1925) 52 I.A. 245, 52 Cal. 809.
[4] (1932) I.L.R. 60 C 54 at p. 73 middle.
[5] (1910) L.R. 37 I.A. 147—37 C 885.

position in law, the question emerges: can you apply strictly the provisions of order No. 32 of the Code of Civil Procedure of 1908 to the case of a Hindu Idol?

I know that some learned Judges have applied these provisions to Hindu Idols by some kind of legal fiction perhaps in the absence of any other relevant provision. But if I am right in the conception of Hindu Deities as shortly stated above, then it seems to me that order No. 32 of the Code of Civil Procedure which is meant only for suits by or against minors and persons of unsound mind, cannot on any conceivable principle, be made to apply to a Hindu Deity. Now, it cannot be denied that in all ancient or mediaeval systems of jurisprudence, rules of substantive law, that is to say, rules which go *ad litis decisionem* are mixed up with rules which should regulate the remedy, that is to say, these rules of procedure which go *ad litis ordinationem*. Therefore, *a fortiori*, provisions of order No. 32 are quite inappropriate in the case of Hindu Idols.

Now, with regard to Thakur's representation in courts of law, as a matter of procedure, a considerable volume of caselaw has grown round the question and reference may be usefully made to the case of Sree Sree Gopal Jew[1] where all the earlier decisions bearing on the point have been collected and summarised.

But again to narrow down the controversy, with the utmost respect to all the learned and eminent Judges who had occasion from time to time to deal with this question, the view that I put forward in a nutshell, through your columns, for the consideration of students of law, of judges, jurists and practising lawyers is this: our legislatures should take up the question and fill up the lacuna in the matter of Deity's representation remembering first of all that the provisions of order No. 32 of the Code of Civil Procedure are entirely out of place in the present context and secondly that the different views of different judges should be reconciled. Adequate provisions should be put on the Indian Statute book for uniform guidance in this matter. There had been no such provision in the code of 1859 nor in the amended code of 1882, nor in the later code which was remodelled in 1908.

The drafting, if I may be permitted to suggest without any offence to anybody, should not be anything like some of those Acts which are characterised by tortuous prolixity and confusion. At any rate, let it have the merit of brevity, clarity and precision. Without overlooking the true nature of a Hindu Deity, these details can easily be worked out to regulate the procedure.

This particular reform has been long overdue. In the interests of not only the Deity but of all concerned, the legislature should take up the burden without further delay.

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[1] (1946) 51 C.W.N. 383.

PLEBISCITE

BY

AVINASCHANDRA GUHA, M.A., LL.B.

*Late Professor of Hindu and Constitutional Laws, University Law College, Calcutta.**

It is being derived from Fr.,—L. *plebiscitum*, decree of the people—*plebs*, the people, *scitum*, a decree—scire, to know, from *sciscere* vote for. Finally, it brings to light a method of gaining an expression of independent opinion throwing on a particular point from the inhabitants of a district or a county or a shire.

The *Plebs* in ancient Rome (From Hotzendrorff-Kohler, *Enzyklopädie der* Rechtswissenschaft, 7th ed. (1913), Band 1.4. (*Geschichte und Quelien des romischen Rechts*, by Bruns—Pernice-Lenel, pp. 313-14).

NIEBUHR & MOMMSEN:

The particians, the proper citizen body, being alone entitled to political rights; the plebeians the mass of the people without any political rights and excluded from the popular assembly (*Comitia curiata*). So Schweglar.

Relation bet., pat., and pleb.

Niebuhr: Pleb. uncoun. with pat. and standing in direct opp. to them. So Schwegler.

Mommsen: pleb. clients of pat. So from Ihne.

Origin of the pleb.

Niebuhr: They were the descendants of the conquered Latins allowed to settle in the country district outside the City. So Schwegler. Others (including Mommsen?): they were sprung from the subjugated primitive inhabitants of Latium. Others again: descended from emancipated slaves and foreigners, who attached themselves for protection to particular patrician patrons.*

Another view (Bindner, *Die Plebs.*, 1909): Rome an amalgam of a Sabini town on the Quirinal and a Latin town on the Palatine: Patricians, the inhabitants of the former, plebeians of the latter.

Lenel's criticism of the Niebuhr—Mommsen Hypothesis of an orig. purely Patrician State: It agrees neither with the ancient tradition nor with the conclusions deducible from analogous phenomena in other city-states of antiquity.

Pleb. Acc. to Mommsen himself (Romische Forschungen, 1, pp. 140 ff.) belonged in historical times, and indeed as members with the right to vote, to the *Curiae;* there is little probability of their status having been different in the Regal Period.

Pleb. had no reason to be ambitious for admission to the *Curiae* at a time when the *Curiae* had already lost all real importance.

Pleb. had defence obligations, and this too is inconsistent with absence of political rights.

Least of all could they be regarded, as the tradition in the Roman writers so full of contradiction would have it, as clients of the Particians; Client bound to patron by a religious tie of fidelity: Pleb. themselves could have clients *de jure*. Strength of Pat. in their struggle with Pleb. depended on the numbers of their clients. The entire class-war becomes unintelligible, if you look upon it as a war of the patrons with their clients, any injury to whom by them was even after the Twelve Tables forbidden under penalty of a religious ban.

Lastly, there is nothing to support the theory which regards the Pleb. as an appendage tacked in a certain degree from the outside on to an originally purely Pat. citizen-body.

Lenel follows, amongst others, Eduard Meyer (in the article "Plebs" in Courad's *Handwörterbuch der Staatswissenschaft*: There grew up gradually in all ancient city-states, owing to inequality in the possession of lands, a privileged Nobility over against the

*By courtesy of Sree Dvijendra Nath Guha

mass of the people. The Pat. at Rome too were such a Nobility. A considerable portion of the poorer population became their clients, but they by no means exhausted the non-patrician pop. of Rome. The remainder, consisting of small peasants artisans, traders, &c. constituted the *Plebs*.

I may add a few words about the freedom of thought and expression, if I am right to say so. It is this. Liberty of thought and discussion absolutely necessary where government not identified in interest with the people. An intellectually active people only where there is complete liberty of thought and discussion, and no dread of heresy. There can never be an intellectually active people in a general atmosphere of mental slavery. Even where violation does not go the length of infringing any *right*, it may be punished by opinion, though not by law. When the period of education is passed, the self-regarding virtues should be inculcated only by conviction and persuasion, and not by "whips and scourges, either of the literal or the metaphorical sort." Besides, coercion into a particular mode of life ends in rebellion.

To speak of freedom of franchise: The franchise is a public trust, not a private right. According to Mr. Bright, it is a right. But none can have a right to power over others. Every such power is morally, a trust. Voting should be at a public place and in the presence of a responsible public officer. Where minorities are unrepresented and voters have equal votes, unfettered discretion to representatives is all the more necessary.

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LEARNING THE LAW

BY

CUB

In a country which does not lack either lawyers or scholars it is rather presumptuous on the part of the present writer to attempt to write on this subject. He hopes, to be pardoned for this presumption for the following reasons. No one has so far come forward to write on this theme—even though the provocation to write has been there for a few years. The reference is to the book "Learning the Law" by G. L. Williams. The writer has, therefore, decided to remain anonymous, and lastly he believes that even a cat may look at a King.

Having dreamt of practising as a lawyer and taken the Law degree, the writer has now realised only one thing that there is a wide gap between what is done and what ought to be done. In our Law Colleges, in the Lawyers Chambers and .....

The secret of success at the bar, the necessity to have only practising lawyers as teachers of Law, the farce that goes on in the name of the Moot Courts, the general indifference of teachers and taught to the subject, and last but not least, the humbug of entering into articles with lawyers need careful investigation.

The delay involved and the nepotism and underhand doings of the umpteen subordinates are not unknown to the authorities. It is a clear case of having eyes but would not see. If the educated man in Independent India who can revolt against these is to be educated in the mysteries of law, a book on the lines of Williams', book is necessary for India.

What does this book contain. The answer in two words is 'read it.'

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To save the time of the busy (lazy ?) reader a summary in the Author's words, as far as it is possible, is given below. Remembering Tennyson who wrote the poem " The ladder of St. Augustine " our author says that in several of the Chapters there is hardly a word that has not been written as a result of an error committed by some novice. In his unconventional book he has only carried the traditions of authors like Coke who gave in their books advice on ' books to read, number of hours reading to be done in a day, legal abbreviations, amusements for a lawyer and the value of keeping a sort of " where is it " note book.

The first question that confronts the beginner is ' how many hours should he devote to the study of Law?' The Author discusses this with the aid of authorities and concludes ' much depends upon the intensiveness of study as upon its length.' The all important question that the student faces is examinations and their relation to legal practice. For " Examinations are formidable even to the best prepared, for the greatest fool may ask more than the wisest man can answer ' C. C. Cotton. From the discussion on this subject the following words are worth quoting: ' Examinations are important episodes in a young man's life and candidates do not know simply what is expected of them. No one ever passed an examination on examination technique alone; but many a good man has through ignorance of it, failed to give a due impression of it."

The importance of referring to cases even when the names are forgotten by law students has been rightly emphasised. What matters is the point that was decided and when the Court should decide it.

Sir Roger North observed that it is not harder to resolve very difficult cases in law, than it is to direct a young gentleman what course he should take to enable himself so to do. The object of including problems is to discover legal ability. The Author advises the student to train himself in problem-answering before the examination. The Author gives illustrations as well as tips to help the student in this task. The student who enters the portals of the Law College dreams of practising as a Lawyer and also doing well at his examination. Our Author says that there is little differences between these two and quotes with approval the necessity of studying first hand work. He condems in unequivocal terms the practice of cram-books—a practice, alas! which has become a disease in this country. What Law books exist in Library and what the relative value of each are discussed. He says plainly which reports are authoritative and which are not. Two quotations are of interest in this connection. When an early reporter Barnardiston was cited before Lord Lyndhurst he exclaimed ' I fear that is a book of no great authority, I recollect in my younger days it was said of Barnardiston, that he was accustomed to slumber over his note-book and the wags in the rear took the opportunity of scribbling nonsense in it. About Espinasse Maule J. said he did not care for Espinasse or any other ass.

Dealing with the methods of study he quotes ' larning by study must be one, it was never entailed from son to son.' What should a student do. Study in the library reading cases from reports or stewing over the text books in his room. The answer is to do both. Then the next question is in what proportion. His primary aim is to become a lawyer; passing the examination is secondary. An amount of potential knowledge is more important than a small amount of actual knowledge. Our Author gives in his inimitable way an anecdote worth repeating. A solicitor had won great renown for his deep knowledge of the law. His secret was this. He had three copies of " Every man's own lawyer " bound to resemble law reports and lettered respectively. " 3 Meeson and Welby " 1 Term Reports and " 7 Manning and Granger " When a client propounded a legal question, the solicitor would ring for his clerk and say ' Bring me 3 Meeson and Welby ' or anyone of the two other books. When the Volume came he would look up gravely the point and

say triumphantly 'Ah here it is. I thought so. The very authority we wanted.' The Solicitor however was not such a fraud as the layman would think!

What is the difference between Civil and Criminal Law? Arising out of this comes the common saying "Trespassers will be presecuted." What a wooden falsehood this is! How should you name cases? There is difference between Civil and Criminal cases in this also and what about the hierarchy of Courts. The High Court in England consists of three Divisions—the first administers of Common Law, the second equity and the third has jurisdiction over wills, wives and wrecks. Then follows a brilliant but short account of the history of different Courts—the supreme Court, the House of Lords and the Judicial Committee of the Privy Council. The judgments of the Law Lords are said to be 'speeches.' In the Privy Council are the highest judges in the land sitting unpretentiously without robes in a smallish room. There is the advice given to the young learner to attend Courts even when the Court-room is somewhat crowded, the police and ushers will generally facilitate the entry of those who boldly announce themselves as Law Students. In appropriate contexts the author explains technical expressions in an inimitable way. 'Recover back' is not pleonastic. 'Pleadings' are not pathetic speeches before Judge and Jury, they are dry statements on paper of the bare facts on which each party to a Civil Case relies. Before the student reads the monumental work 'Maitland's Equity' he can with immeasurable benefit read our author's chapter entitled 'Common Law and Equity.' Precedent is an important principle of English Law. On this Tennyson says.

> Mastering the lawless science of our law,
> That codeless myriad of precedent,
> That wilderness of single instances,
> Through which a few, by wit or fortune led,
> May beat a pathway out to wealth and fame."

With illustrations the Author gives in a chapter, 'ratio decidendi,' 'obiter dictum' and 'fact.' The student is also taught what facts he should remember.

How to train yourself to be a good lawyer. Here is something to follow!

> 'In my youth' said his father, 'I took to the Law
> And argued each case with my wife,
> And the muscular strength it gave to my jaw,
> Has lasted the rest of my life.

There is no finer training for the young advocate in the argument of points of law than taking part in moots. Counsel may submit or suggest but should not express an opinion.

Who are authorities to be cited?

There used to be a rule (perhaps there is still) that a writer is not an 'authority' until he has gone the way of all flesh. When Salmond died it was said that he had at last beaten his friendly opponent Pollock who was still alive. For Salmond had become an authority. Unfortunately the victory has not proved permanent. During Pollock's lifetime Lord Wright remarked in one of his judgments: "The matter is very clearly stated in a work, fortunately not a work of authority, but to which we are all as lawyers indebted, Sir Fredrick Pollock's 'Law of Torts.' The printer of the case in the Law Times Reports misunderstood the subtle compliment and turned 'fortunately' into 'unfortunately!' George III is reputed to have said that lawyers do not know much more than other people, but they know better where to find it. The author gives a list of books to consult and recommends Stevens 'Where to look for your Law.'

About joining the Bar this is what our Author has to say. In respect of getting a start it is the most risky of all the livelihoods open to the lawyer as such, and no adviser with a sense of responsibility would counsel a young man who is doubtful as to his vocation to enter for it. This does not, of course, mean that no sane person would enter for the Bar with a view to practising, but the initiative must come from the man himself.

If a would-be barrister can be stopped from entering this profession, it is in his own interest that he should be stopped. If he is the sort who is stoppable, he is the sort who will fail. What qualities go to make the right sort of lawyer?

Sound constitution and quickness of thought. The Chapter 'From Learning to Earning' is only of academic interest to an Indian student but interesting all the same.

The last chapter is of great practical importance which should not be simply read, nor studied but mastered.

AVINAS CHANDRA GUHA AS I SAW HIM

BY

A. C. GHOSH, M.A., B.L.

Advocate, High Court, Calcutta

There is a saying that the world does not know its really greatmen. If this saying has any application any where or in relation to any man, there cannot be any better instance of its application than in the case of Mr. Avinas Chandra Guha, a Savant, Jurist, Philosopher and an Advocate of the Calcutta High Court. I have had the good fortune to come in close touch with many a leading men in thought and action in this country who were or are being worshipped and followed as greatmen. I have closely studied the culture, education and mental equipment and other intellectual attainments of these greatmen and compared them inwardly with the corresponding traits and attainments of Mr. Avinas Chandra Guha and have invariably found the result of such comparison in favour of the latter, but notwithstanding that the fact remains that it was never the lot of Mr. Avinas Chandra Guha to attain that position of acclamation and applause or that recognition of eminence which these publicly accredited greatmen enjoyed, and I very often put this question to myself why such difference happens, but found no explanation for the same except that the world constituted as it cannot always discover its true greatmen and that even if the world makes such discovery it does not do so at the right time. It took the world a long time to accord recognition to a Milton, a Galileo or a Michael Madhusudan, and instances of inglorious Miltons and Galileos striding this wide world at same age but never receiving any public recognition are altogether rare. It is high time that we should start a fresh stock-taking of our greatmen. A contemporary writer and Journalist has taken upon himself the task of such stock-taking and has been embellishing the pages of the "YUGANTAR" with the life-histories of a good many greatmen who have hitherto remained unsung. I think somebody ought to take up the work of writing out a life-history of biography of Mr. Avinas Chandra Guha and put on record his attainments and the services he has rendered to society and humanity at large. I was quite a young school boy when I had an occasion to meet that scholarly sage and savant; on my approach near him I was introduced by a common relation to him. It was a red letter occasion in my memory, when I found that greatman in the midst of his library with an impressing collection of books. Before that day I had no idea what was meant by learning or how vast learning was. The impression that I carried that day has ever been fresh in my mind and produced a lasting

affect on my own course of life. Being questioned by him I gave out my name to him and he acclaimed me as his name-sake. This was a magic discovery for him and served to bridge the wide gulf subsisting between him and me in respect of age, education and opulence and bring him down to my level and accept me as an equal and a friend. I was amazed at this amiable, unassuming trait of his character and imbued me with a lasting appreciative leaning towards him. I had then some taste of his stupendous learning which I gradually came to appreciate more and more as years rolled on. I came in closer touch with him when I myself joined the High Court Bar of which he was then a most distinguished. At the bar, he held a unique position and was universally revered and endeared. His university successes had won him great laurels and made it an easy job for him to make a headway as a lawyer. Added to great learning he had a remarkable gift of the gab together with keen insight into legal subtleties. All these qualities earned for him a position at the Bar and an appreciation from the Bench. Whenever he appeared before the Hon'ble Judges in connection with any case, they would listen to him with rapt attention and would regard his marshalling of facts and expositions of law as of great assistance to them. Gifted with wonderful power of expressions, he would present his case in such a way that it was impossible for a judge hearing him or for a lawyer sitting by to turn away his attention from him. Whenever, I found any difficulty with any question of law, I would approach him. My old acquaintance with him and his natural softness of heart in relation to me made it always an easy matter for me to refer to him my difficulties without any ceremony or any formal introduction. Many of us had occasions to disturb his leisure moments in season and out of season, but what struck me most was that his great warmth of heart towards us never abated on that account. Some people thought his proficiency in Sanskrit placed him in good stead in relation to knowledge of Hindu Law, but we have consulted him in other branches of law, and have found that his mastery over those branches also was equally great. As a linguist, his reputation among the members of the High Court Bar was practically unrivalled. I had occasion to hear him speak about other subjects besides law and literature and always felt amazed at the wide range of his knowledge in those subjects also. His knowledge of medicine and medical science was equally remarkable. I have personally profited on many occasions by his suggestions about recipes and regulation of diet.

CASE FOR THE INTRODUCTION OF DIVORCE IN HINDU LAW

BY

SRI SUKRITIKUMAR GHOSH, 2ND-YEAR CLASS

The Hindu Code Bill is on the way to enactment and the public opinion of India is sharply divided over it. The bill has been designed as the first attempt at a comprehensive enactment of the Hindu Law; it has been couched with modifications of far-reaching importance. Many western ideas have been inserted with a view to keeping pace with the

progress of the world around. But such innovations have been received by the mass with a great alarm and indignation; many think such attempt as a direct threat to the India's age-old culture. One of those innovations is the divorce system which is thought to be thoroughly contrary to the conception of the Hindu Marriage. It is generally thought that the Hindu marriage is a permanent affair not to be dissolved in any circumstances. The very word divorce is indeed hateful to the orthodox Hindu mind and the actual practice of it is generally incapable of being conceived of by them. In such a society the law of divorce would not definitely get a hearty welcome; hence the Hindu Code Bill has been showered with trenchant criticism.

Though, according to popular conception, marriage still remains an inseparable union, the fact would prove to be somewhat different on a closer analysis. A study of the different marriage systems practised throughout the world would exhibit that in every polished system of law, the duration of the marriage tie has been made lifelong. "But though this may be very wholesome rule in general, exceptional cases may arise in which the continuance of the union would be a source of lasting misery to either or both of the parties. To meet these contingencies divorce in some form or other is prescribed by the most systems of law. The different forms of divorce may be classed under either of two heads—first, dissolution of marriage and second—separation of the husband and wife in bed and board, their marriage tie still subsisting." A full fledged and complete form of divorce comes only under the first group while the second group is a half-way house. The provisions of Hindu Law relating to divorce is somewhat unique. Before the beginning of our study of these provisions it is interesting to note that some of the ancient writers of the texts of Hindu Law expressly sanctioned the second marriage of women. Writers like Narada, Devala and Parasara laid down rules to this effect. Parasara, as for example, declared in his celebrated text—"If the husband be missing or dead or retired from the world or impotent or degraded, in these five calamities a woman may take another husband." But these directions of the ancient writers are not practised in India of today except where there are customs or statutes having similar provisions. It has become obsolete since long. Thus in India marriage is generally regarded as an indissoluble union.

But this doctrine of the inseparability of the marriage tie has afterwards become, to some extent, moderated so as to grant relief to those who feel the continuance of the union as a damnation. Thus a degree of departure from the classical ideas is visible in the modern Hindu Law to the extent of the second class of divorce. As Dr. Banerjee remarks in his thesis, "Though the Hindu Law does not allow divorce it is not so unreasonable as to compel married parties to live together as man and wife under all possible circumstances. In certain cases..... either spouse is permitted to resist the claim of the other for restitution of conjugal right." Thus a woman on some justifiable ground unwilling to live with her husband may resist successfully the suit of the husband for the restitution of conjugal rights. The Court may, accordingly refuse to pass a decree for restitution of conjugal rights against the wife if the husband is suffering from a loathsome disease such as leprosy or syphilis or if he keeps a concubine in the house or if guilty of cruelty in a degree rendering it unsafe for the wife to return to her husband's dominion or if he adopts another religion.

In this background of the present position of the Hindu Law regarding the negation of union, we proceed to a study of the relevant provisions of the Hindu Code Bill. A distinction has been drawn in the Hindu Code Bill between the void and voidable marriage—certain marriages contain such inherent defects within them that they are void *ab initio*, while others are voidable, *i.e.*, can be dissolved by the wish of the aggrieved party. In the cases of the void marriages the union becomes dissolved automatically while in the voidable marriage there is the option of the parties. The question

of divorce which is our subject of study is related primarily to the voidable marriage. It may be noted here that no marriage can be undone except by judicial decision. The cases of voidable marriages as cited in the Hindu Code Bill are *inter alia* as follows:—

1. Insanity or idiocy of any one party.
2. Parties within the prohibited degrees of marriage.
3. Parties incapable of sexual intercourse.
4. Husband having kept a woman as a concubine or wife having been a concubine of another or a prostitute.
5. Change of religion by one party.
6. If any party suffering from virulent and incurable leprosy.

Clause 50 of the bill provides that each party can marry a second time after certain time. It follows from the discussion above, that the principal distinctive mark of the proposed divorce system is the right of the woman to a second marriage. The cases cited in the Hindu Code Bill as the just cases of divorce generally tally with the cases where restitution of conjugal rights can be successfully objected to. Divorce of the full-fledged type consists of two parts; first, the right to cancellation of the previous marriage and second, the right to a second marriage. The first right has *de facto* been granted to woman in the present Hindu Law by enabling them to avoid the conjugal relations. The problem of divorce therefore, centres round the single vital question that whether a woman can have the right to a second marriage.

Corresponding to the distinction in the Hindu Code Bill between void and voidable marriage, there is a distinction in the present Hindu Law between marriage void *ab initio* and those where the conjugal relations may be stopped. In both the cases the Hindu Law is very harsh to the womanfolk. As has been noted earlier a second marriage of women was formerly strictly prohibited even in cases of widowhood. Widows however, have afterwards got the sanction of law to a legal marriage for a second time. As regards other cases, the change of religion is the solitary instance where also a second marriage of woman in some cases has been allowed. Excepting these instances, in no other cases Hindu Law permits a second marriage—both in case of marriages void *ab initio* and the marriages where separation can be effected by Law. Such a rigid regulation is unique to Hindu Law and truly a very unjust one. Dr. Banerjee while discussing the effects of the void marriage aptly remarks " Even the virgin widow has one consolation for her hard lot, *i.e.*, due to a cause which no human foresight could prevent. But the condition of the repudiated virgin wife (whose marriage is void *ab initio*) who is condemned to a life of virtual widowhood..... is truly pitiable." We can reasonably generalise this mark to a step further so as to include the voidable marriages. Objection to the restitution of conjugal rights by the woman is not a matter of great fortune to the womanfolk—enjoyment of a family life is an universal craving. Still when they avoid conjugal relations, they do this as if by a sort of compulsion, no other easier remedy being left open to them. Thus some sort of wrong on the husband's part, a human fault and not the curse of God, brings a woman to the virtual position of a widow. But quite curiously while the widows have got the sanction to a second marriage, others have not. We can therefore reasonably say on these grounds that a more just and rational principle would be to grant the right to a second marriage to these unfortunate women. The Hindu Code Bill is an attempt at the abolition of such injustice and removal of the anomaly.

Besides, social justice requires the system of divorce in every legal system. It is indeed more shocking to keep the women-folk to a perpetual subjugation, when we feel proud to be an ardent advocate for democracy, the fundamental principles of liberty and equality. It is queer for the old systems of law and specially of the Hindu system to think of liberty as the special privilege of men. A belief in this has led to the fact that men have the right to find out their best partner in life as if through an experiment of one marriage after another by the practice of polygamy, but the women-folk

can have no deliverance from the yoke of a brute husband and have to yield to his tortures.

Most of the cases that have been specified for an effective divorce in the Hindu Code Bill, make by themselves a natural family life impossible. Deformity and disease of the husband make intercourse impossible or dangerous and consequently deprive the wife of the happiness which is the characteristic of a natural family. In such circumstances the cravings for a family life that is immanent in every human constitution demands means of fulfilment—even by resort to illegal means if legal means are lacking. A simple appeal to the conscience and justice, in such case, is sufficient to strengthen the argument for divorce. It is even a check to the degradation of the society.

LAW, I UNDERSTAND AS A BRANCH OF EDUCATION

BY

SRI AMALKRISHNA SAHA, 2ND-YEAR

A building or a machine needs the help and assistance of an engineer for its construction, maintenance and stability; likewise a society cannot thrive without the help and assistance of the lawyers, and as a matter of fact the lawyers are Social Engineers. It is impossible on the part of a society to move and have its natural evolutionary growth without the men of the legal profession. It can thus be said that law is concerned with the external conduct of man who, above all, is a social animal. In the primitive society, Law and Lawyers existed side by side and must also exist in all the times to come in some form or other.

It may be well said that at times Lawyers are more valuable than the Doctors, because a doctor usually diagnoses the disease of an individual unit of the society and prescribes some proper curebalm to heal up the same. But a true Lawyer's job is much more than that; he should determine the social disease in a collective form; and for proper regulation of human conduct, he should suggest new laws to suit the changing needs of time. Law has sometimes been described as a body of rules which regulate the relation between man and man and have been brought into being for regulating human conduct. If we cast our glance at the primitive stage of society, we find that Religion played an important part in the development of law and people believed their laws to be of Divine origin. It is written in the Vedas, " Law is the king of kings, far more powerful and rigid than they; nothing can be mightier than the law by whose aid, as by that of the highest-monarch may prevail over the strong."* We fully endorse the statement of our forefathers. We find that law really deserve such high importance. We can rightly comment that society will cease to have its charm without law and members of this learned profession.

" Liberty " which is the common cry of the day cannot be maintained, honoured until it gets the safeguard of law. A Lawless society is no society. If absolute freedom is granted to the members of the society to do whatever they like will naturally lead to chaos and disturbance. Hence law has been said to be the condition of liberty.

Many great men of the world are members

* From the Vedas quoted by Prof. Holland.

of the noble profession. The real task ahead of those sound lawyers are to mould the society.

Law is neither a trade nor a solemn jugglery but a living science. Indeed, training in law has an inestimable value. It trains one's mind wonderfully well, it sharpens the wit, enables one to take a comprehensive view, both for and against a matter. Lastly it enables us to come to a quick decision. In these days of complexities of life a lawyer's training is certainly a very valuable asset. A politician or an administrator or a legislator or anybody professing to do good to the country will do well to have such a training.

Law's ultimate object should no doubt be the highest well being of the society, and the state, from which law derives all its force, is something more than an "Institution for the protection of rights." Law now-a-days is defined as a rule of conduct enforced by the sovereign political authority.

To conclude, it can be said that in the state where no law emanates according to the changing needs of time, chaos and discontent prevail. Now-a-days peace is the aim of the progressive masses of the world. Peace brings happiness and permits the people to develop themselves economically and socially in a constructive way. So if anybody really loves the country, its factories and mines, its towns and villages, he should love peace, and to gain a lasting peace, he should honour and worship law.

LAW AND LAUGHTER

It is a common error to suppose that our law has no sense of humour, because for the most part the judges who expound it have none.

But law is after all a serious business—at any rate for the litigants—and it would appear also for the attorneys, for while witticisms of the Bench and a Bar a-bound, very few are recorded of the attorney and his client "law is law" wrote the satirist who decided not to adopt it as a profession. "Law is like a country dance; people are led up and down in it till they are tired. Law is like a book of surgery—there are a great many terrible cases in it. It is also like physic—they who take least of it are best off. Law is like a homely gentlewoman—very well to follow. Law is like a scolding wife—very bad when it follows us. Law is like a new fashion-people are bewitched to get into it. It is also like a bad weather—most people are glad when they get out of it.

Bullying witness is an old practice of the bar, but for instances of it emanating from the Bench one has to go very far back. A witness with a long beard was giving evidence that was displeasing to Jeffreys, when Judge, who said, "If your conscience is as large as your beard, you will swear anything." The old man retorted: "My Lord, if your lordship measures consciences by beards, your lordship has none at all."

* * * * *

To Hon'ble Mr. Justice Maule a witness said: "You may believe me or not, but I have stated not a word that is false, for I have been wedded to truth from my infancy."

——"Yes Sir" said the judge dryly, "but the question is how long you have been a widower?"

* * * * *

A judge of the sixteenth century, Sir Nicholas Bacon, who resembled Sir Thomas

Moor in the gentleness of his happiest speeches, could also on occasion exibit an unnecessary coarseness in his jocular retorts. A circuit story is told of him in which a convicted felon named Hog appealed for remission of his sentence on the ground that he was related to his lordship. "Nay my friend" replied the judge, "you and I cannot be kindred except you be hanged, for Hog is not Bacon until it be well hung.

* * * * *

(Selected by Chandrakumar Banerjee)
Editor

To Lord Chancellor, Halton, also an Elizabethian Judge who aimed at sprightliness on the Bench, a clever mat is attributed. The case before him was one concerning the limits of certain lands. The counsel having remarked with emphasis, we lie on this side, my lord, "and the opposing counsel with equal vehemence having interposed, "and we lie on this side, my lord"—the Lord Chancellor dryly observed "if you lie on both sides whom I am to believe?"

From George A. Morton's and D. Madeod Malloch's "Law and Laughter."

POSITION OF THE PRESIDENT OF INDIA

BY,
SRI AJITPRASAD ROY, 3RD-YEAR LAW

Under the constitution there is placed at the head of the Indian Union a functionary who is known as the President of the Union. He is the Supreme Executive Authority of the Union. There is some confusion in the minds of some people about the real position and powers of the President under the Constitution of India. In order to assess the real position of the President we should not be guided by "the traditional lawyer's view"—too technical and legalistic—but try to "penetrate the legal forms and ceremonial trappings" to "inner verities."

The system of Government we have today at the Centre under the new Constitution of India is definitely the Cabinet or the Parliamentary system of Government. It has certainly been modelled on the English system of Government. So the position of our President is analogous to that of the Crown in the English Constitution. Like the Crown in England and like the French Presidency under the third and fourth Republics, but unlike the American Presidency—our Presidency is practically "a convenient working hypothesis" and our President is the ceremonial Head of our quasi-federal parliamentary democracy. He occupies the same position as the king under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the Nation. "His place in the administration," to quote Dr. Ambedkar, "is that of a ceremonial device on the seal by which the nation's decisions are made known." The position of our President in relation to his council of ministers is like that of the King of England. The constitution says that "the Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister." This gives a statutory sanction to the English Convention relating to the appointment of the Ministers. The Prime Minister is selected and appointed by the King but his range of choice is limited by the rules of Convention. He must choose as his Prime Minister a person who has the support of the party or coalition which may be expected to command a majority in the Lower House, *i.e.*,

The House of Commons. Likewise the Indian President must choose as Prime Minister a person who has the support of the party that commands a majority in the House of People. The other Ministers are to be appointed by the President on the advice of the Prime Minister. The same is the practice in England. The nomination of Ministers rests with the Prime Minister. Like the King of England and the President of the French Republic—our President is the constitutional head of our Governmental system—its titular chief executive; whereas our Council of Ministers at the Centre with the Prime Minister at its head constitutes our real executive Government. This is the essence and spirit of our constitution at the Centre.

The title 'President' reminds one of the President of the United States of America. But beyond identity of names there is nothing in common between the form of Government prevalent in America and the form of Government at present functioning in India. The American system of Government is called the Presidential system of Government whereas ours is a parliamentary system of Government. The two are fundamentally different. Under the Presidential System of America the President is the chief head of the Executive. The administration is vested in him. He is not the ceremonial head but real head of the State. In America the President has under him Secretaries-in-Charge of different Departments. In like manner, the President of India has under him Ministers-in-Charge of different port-folios of administration. But here again we find there is a fundamental difference between the two. Whereas the American President is never bound to accept any advice tendered to him by any of his Secretaries, the Indian President will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the U. S. A. can dismiss any Secretary at his pleasure while our President has no power to do so so long as his Ministers command a majority in the Parliament.

Under the law of the Constitution, the President will be elected by members of an electoral college consisting of: (*a*) the elected members of both Houses of Parliament and (*b*) the elected members of the Legislative Assemblies of the States.

The executive power of the Indian Union will be vested in the President and will be exercised by him either directly or through officers subordinate to him, in accordance with the Constitution. In particular, the Supreme Command of the Defence Forces of the Union is vested in him, but its exercise is to be regulated by law. Apart from being endowed with large powers by the Constitution, all executive action of the Government of India is "expressed to be taken" in his name. If we go to the "inner verities" of the Constitution we shall find that, although the Constitution has vested extensive powers in the President, these powers are really formal or nominal because of the nature of our system of Government at the Centre. The expression 'aid and advice' in Clause I of Article 74 is a constitutional euphemism. It has been used in pursuance of the past practice for the maintenance of outward dignity of the office of the President and for avoiding some practical difficulties of a constitutional character. Moreover, the expression would impart some flexibility to our constitution and leave the question of relationship between the President and his Council of Ministers to be regulated by Conventions, as in England. The constitutional implication of the present position, therefore, is that so long as the Council of Ministers command the confidence of the majority of the House of the People, the President must accept the advice of his Ministers on all questions to which they attach any importance, or he must dismiss them and be prepared to face the consequence. Besides, a President who will deliberately disregard the traditional maxims of the parliamentary system of Government and thus violate the spirit of our Constitution, will seriously run the risk of impeachment and removal from office, as provided for in the Constitution. This impeachment would really be a political affair in

Legislature, and that means much. Against the decision of the Parliament in case of an impeachment the President will have no right of appeal to any other body. The constitution thus seeks to establish a Republic in India in which Governmental power is to be exercised according to the will of the people. And there is no doubt that the Ministry at the Centre which will enjoy the confidence of the Lower House of Parliament is ordinarily to be regarded as the representative of the popular will in the Union. A President who cares for the spirit and the letter of the Constitution will not, therefore, in normal circumstances dare to disregard the advice of the Ministry. Indeed, the President of India is not and cannot be a dictator or an autocrat in any circumstances. He is simply the constitutional head of our quasi-federal parliamentary democracy. He is the head of our State: but his Prime Minister is the head of our Government.

The President, however, if he happens to be a man of outstanding personality and sterling character, will weild great power. Being himself an elected representative of the people, he will enjoy enormous prestige and by the power of his personality he will surely exercise a considerable influence over the decisions of the Ministry. Even then, if his influence is to be really wholesome and effective, he must be above party-politics and free himself for all his party ties. Indeed, the position of the President of India is unique.

THE FUNCTION OF LAW IN WELFARE STATE

BY

SUDHIRKUMAR GANGULI, 2ND-YEAR, SECTION I

THE CONCEPT OF WELFARE STATE

Thirties of the present century witnessed the emergence of the Welfare State. The essential feature connected with this emergence is the entry of the state in the economic arena. Though the concept of the welfare state is of earlier origin, yet the immediate causative factor of this emergence is the great Depression of 1929-33. Economic fluctuation is a phenomenon too common in an unplanned atomistic economy where on central co-ordinating organ functions,—where production is carried on primarily with profit-motive. Though economists and social thinkers viewed this phenomenon with embarrassment and alarm and theories after theories were piled up to explain its causes, yet no effective measure was envisaged to stabilize the economy. Almost as a natural corollary to man's ignorance developed the Great Depression resulting in unemployment on an unprecedented scale and dwindling down of the national income to an extremely low level. It is at this crucial point when civilized humanity suffered a moral and material stagnation that the state emerged as a welfare organ to bring about harmony among the different sectors of economic life.

The essential problem of life is the problem of harmonious development. I should like to put emphasis on this dynamic aspect, because where there is no development, there is either decline or, at best, stagnation. The development in the capitalist framework is carried on by free enterprise—as a result there are alternate overproduction and underproduction relative to effective demand—gross maldistribution of national income—which are but the two mani-

festations of the lack of harmony among the different sectors of the economy.

The exponents of laissez-faire philosophy had absolute faith in the perfect harmony between private interest and social interest. They upheld the view that an individual in pursuing his own advantage is led by an invisible hand to promote the social welfare. This naturalism and optimism gradually dwindled down with the contractionary phase of capitalism and finally vanished with the outbreak of the depression. So long the state was permitted to perform only political functions leaving the domestic economy completely free from its intervention, but the depression drew the State in the economic theatre and naturally it became the hero of the drama.

In the hands of the laissez-faire State, law was simply a political instrument designed for the maintenance of order and security in the State. But at the rockbottom of depression, the State was compelled to assume an enormous amount of economic functions in order to secure the welfare of the community. Enumeration of some of the welfare services is required in order to get a concrete idea of the welfare State, but we shall do that after completing our inquiry about the function of law.

The Function of Law

I wish to summarize, at the outset, some of the principal views relating to the function of law. Eminent jurists like Hobbes and Saviguy have emphasized the negative aspect of the function of law. According to them law limits the otherwise unchartered liberty of men with a view to establishing order in society and provide for defence against external aggression. In the exact language of Saviguy law circumscribes " the invisible limit within which the existence and activity of each individual may obtain and secure free play."

But this negative view certainly does not cover the entire scope of law. " Law is something more than police;" it has certainly a higher object in view besides keeping a vigilant watch upon the respective rights of the members of the community. This positive aspect of the function of law has been brought into limelight by such distinguished jurists as Krause, Ahrens, Bentham and Locke. According to them the function of law is to assist society to attain perfection by maximizing social welfare. One of the modern exponents of this view, Prof. Roscoe Pound, former Dean of the Harvard Law School, observes that the chief task of law is " to maintain, further and transmit civilization."

But Prof. Holland points out that maximization of Social Welfare is the ultimate object of law. The immediate object of law, according to him, is the creation and protection of rights. But creation and protection of rights without reference to Social Welfare is certainly not rational. A rational analysis of the function of law will lead us to accept the long-term view as propounded by Prof. Roscoe Pound and others.

In order to visualize how law can " maintain, further and transmit civilization," we are to know certain features of civilization.

Features of Civilization

Mr. Clive Bell in his brilliant book or " Civilization " has discerned two parent features of civilization from which its other fetaures flow. These two parent qualities are: first, the development of the sense of values and secondly, the enthronment of reason. As civilization advances mankind realises higher and higher sets of values and becomes more and more rational. Human history is almost a continual process of the collapse of a certain set of values and the emergence of a higher one. Law not only reflects but also can facilitate the growth and development of these two parent characteristics of civilization. And to the extent it facilitates this development, it assists the evolution and transmission of civilization and hence performs its chief task. At this point we are to note that maximization of human welfare and attainment of civilization are almost synonymous.

Law Retarding Civilization

One of the accepted values of human society which law protects most enthusiastically is the sanctity of property. But in this respect law is not functioning as an instrument for furthering civilization. The Superstructure of Civilization is built upon the economy of the Country and progress of civilization essentially depends upon economic prosperity. But the notion of sanctity of property is retarding economic prosperity and hence the growth of civilization.

That law retards the progress of civilization will be clear if we analyse the economic conditions of India. India is looked upon as an economically backward country. The two primary factors, among others, which can bring about economic prosperity in India are the integration of land and the formation of capital. But neither land-integration nor capital-formation is possible so long we suffer from the obsession of the sanctity of property. This obsession has induced the distinguished framers of the constitution of India to incorporate into one of its articles the provision that property shall not be confiscated without paying adequate compensation. But the payment of adequate compensation is a gigantic task beyond the capacity of the common man as well as of the government. The standard of life of the common man is already so low that he cannot curtail his consumption any more in order to form capital. The revenue of the government does not permit it to pay compensation, nor it can resort to printing press, because printing of money to pay compensation will inflate the currency to such an extent that the economy of the country may completely collapse. The easiest and the swiftest way to economic prosperity is the confiscation of property without paying compensation. But that is an idea which is still repulsive to the men in power, obsessed with the notion of the sanctity of property.

The notion not only checks further prosperity but causes positive depression. It leads to the centralisation and concentration of wealth in the hands of very few and gradual impoverishment of the vast majority of the mass. It is causing malnutrition, starvation, and death. Sanctity of human life has been sacrificed for the sanctity of property. We have assigned higher value on the latter, less value on the former, certainly a perverted sense of value. And this perversion signifies the fact that we are on a lower strata of civilization.

We shall now examine another basic value of human society—the value of personal freedom. Champions of western democracy profess to prize personal freedom more than anything else. Indeed they call these nations "free nations." Here the sense of value is certainly not distorted so long liberty is distinguished from license, but the means employed to achieve this end clearly reveal that reason has not yet been enthroned. For example, freedom of speech and expression, assembly and association, religion and culture, etc., has been sought to be guaranteed by constitutional provisions. But I should like to point out along with Mr. Samuel Seabury and other progressive thinkers that "when people are denied economic independence they cannot long continue to enjoy the rights of free speech, free press and the right of religious freedom."

Again, contractual freedom has been looked upon as one of the achievements of civilization. Indeed Sir Henry Maine has described civilization as a movement from status to contract. But contractual freedom conceals many elements which impedes the realisation of freedom in actual life. It is quite manifest in monopolistic labour market, where labour is "free" no doubt, but free to starve and die. It is for these reasons we are led to uphold the view that "existing philosophies of law outlaw the recognition of human rights."

Law Accelerating Civilization

But there have taken place marked changes in recent trends of juristic thought. Mr. Roscoe Pound in his thesis on "Social Control through Law" has summarized six such major changes. I shall quote three of

them because of their relevance to our present discussion:

(*a*) There has been a shift to an economic emphasis, putting emphasis on wants rather than on wills, thinking of free self-assertion as but one of many human wants or demand or desires, and seeking a maximum satisfaction of wants rather than a maximum freedom of wills.

(*b*) There has come to be an objective, as contrasted with a subjective emphasis as, for example, in the general giving up of Savigny's theory of contract, which the law teachers of the last century, particularly in England sought to foster upon the common man. That theory flowed from the idea of the will as the central point in jurisprudence. Hence the general abandonment of it today is significant.

(*c*) There has been a movement for teamwork with other social sciences; the study of law as part of a whole process of social control. This is an essential point in the twentieth century sociological jurisprudence.

Mr. Roscoe Pound regards the want for freedom of will as but one of many human wants. But freedom of will, as we have pointed out earlier, is not independent of economic wants. As a matter of fact the former flows from the fulfilment of the latter. Freedom of will is an illusion when the weight of economic wants hangs heavy on the people. Here law can perform a very useful welfare function. Law can define and protect the status of people in such a way as to ensure maximum amount of economic independence to everyone. The meek labour legislation of modern days does not guarantee it, but it shows the general trend—the trend of movement from contract to status. The general abandonment of Savigny's theory of contract does not signify that the idea of will has been displaced from its central position in jurisprudence. On the other hand, it implies the enthronement of reason—reason leading man towards concrete realisation of freedom of will in actual life.

But how can economic independence be guaranteed for everyone ? That is the crucial question which must be answered boldly. The answer has been hinted earlier, but here I wish to dwell upon it a bit more elaborately. Our starting-point shall be the third major change in juristic thought which we have quoted above. The function of law shall not be an isolated one; it should take into consideration the lessons of other social sciences and act in conjunction with them. The science of Economics has equipped us with much information which will enable us to answer the question. It has taught us that economic independence cannot be ensured in a " free " economy where violent fluctuations take place frequently in the levels of production, employment and income. The State must, therefore, assume such functions as one necessary to stabilize the economy and to bring about harmony among the different sectors of the economy. The State must be legally bound to provide employment to those who are willing to work; or, in other words, the State must create a situation in which the absence of involuntary unemployment is ensured. The most ominous evil which is hunting the peace of every peace-loving soul in modern times is a sense of insecurity—insecurity springing from many sources, chief among them is the fear of unemployment and starvation. The State must guarantee a decent standard of living for everyone, must provide social securities, old-age pensions, free primary education, health, services, etc., to the members of the community. The State must mobilise the untapped resources of the country, channelise them to their optimum uses and thereby ensure the economic prosperity of the community. As a matter of fact many of these welfare services have been incorporated in the constitution of India in the part on " Directive Principles of State Policy." But unfortunately the articles of this part are not enforceable in any law court. And the fundamental rights of the constitution cannot be actually enjoyed by the citizens unless law embraces these welfare articles. The chief objection against the inclusion of these articles within the scope of law relates to the problem of the lack of fund in the hands of the government. But the problem of fund is not a real problem, it can be solved imme-

diately, as has been solved in many parts of the world, if we can get ourselves free from the obsession of the sanctity of property. Revolutionary outlook is necessary on the part of the legislators, otherwise mass revolution would release a wave of horror and death and cause the collapse of the entire social structure.

ADDRESS BY THE GENERAL SECRETARY AT THE ANNUAL RE-UNION, 1951

MR. PRESIDENT, HONOURED GUESTS, FELLOW-STUDENTS, LADIES AND GENTLEMEN,

I have the privilege and pleasure of addressing you on behalf of a Union which I may say, a premier college Union of India. We are assembled here today for the ninth time since the Re-Union gathering started in 1942-43 drawn by the ties of common association. We bring with us greetings and good wishes. We meet once in a year inspired by the sentiment of attachment for the past, with hopes for the future. I may say, it is not possible to express in words the feelings and sentiments which your presence in our mind evokes.

We recall the services and sacrifices which this institution has rendered not only in legal profession but also in social and political fields. Lawyers have guided our country for more than a century and many of them have been connected with this institution. We are proud that there are so many leading, prominent figures in our country who are the ex-students of our college. At present the most notable person of our country Dr. Rajendra Prasad, the first President of Free India, is an ex-student of this institution. They were students, like us, who attended lectures and moved about here regularly.

I think it superfluous to introduce the Hon'ble Justice Sri P. B. Mukherjee, our Guest-in-Chief, today, to you. He is far too well-known to you, ladies and gentlemen. Our President, Dr. P. N. Banerjee, Principal of this College, is a pride of this institution. We are fortunate in having such a vastly learned person with a strong personality as our Principal.

We are glad to have Professor Ramendramohan Majumdar, President of this Union for this year. Inspite of his ill health he is taking all pains to make all the union works successful.

It is the custom for the General Secretary to place a report of the activities of the Union at this meeting. It was within the scope of the then General Secretary to do so, because the Re-Union meeting was held at the end of his annual term of office. Since 1946 the elections were delayed and so typically, like other things, that delay is continuing year after year, and naturally this is the beginning of my office term as the General Secretary. But I like to place before you a brief outline of our future programme of works. We like to hold all the functions distributed throughout the year.

We are thinking of organising a Mock Security Council on an interesting issue. We will also hold the All-Bengal Debate and the Inter-Class Debate. We have also planned to organise a Legal Conference shortly.

Our college Magazine will be published soon. I request all students, ex-students and

other distinguished lawyers to contribute articles for our college magazine.

By this time we have raised a Students' Aid Fund and we hope to give some relief to the deserving students by the month of November, 1951. We will have our annual social and dramatic performance by the end of this term.

It will not be out of place to mention here, in brief, the present political and economic condition of our country. India is, since the attainment of her political freedom, passing through grave crisis and the sufferings of the millions of our poor countrymen are increasing by leaps and bounds. While expressing our sympathy for our countrymen I count it to be my pious duty to make an appeal to the people at large to realise their responsibilities at this critical juncture specially at the ensuing general election.

Perhaps it would not be wrong on my part to hope that we will be able to set up such a responsible Government with progressive idea, whose first duty would be to redress the sufferings of our countrymen and to prove the Government to be worthy and true representative of the people.

In conclusion, Mr. President, Honoured Guests, Fellow-students, Ladies and Gentlemen, I would like to thank you from the depth of my heart for participating at this gathering.

We have arranged for you songs, recitations, comic sketches, etc., by distinguished artists. Our students and ex-students also will participate in it.

At the end of this function we will offer you some light refreshments. Kindly accept our moderate but sincere hospitality.

At last I would like to thank the workers of the Union, volunteers, fellow-students and ex-students and particularly to Professor S. A. Masud and Professor P. C. Chunder, Vice-Presidents of our Union, for their ceaseless efforts without which it would have been impossible for us to assemble here for this happy occasion and make it successful.

I thank you once again, Mr. President, Honoured Guests, Fellow students, Ladies and Gentlemen.

JAI HIND

ANNUAL REPORT OF THE UNIVERSITY LAW COLLEGE ATHLETIC CLUB, 1950-51

Here is the annual report of the Athletic Club of the University Law College, Calcutta. It is a matter of great pleasure that keen interest and enthusiasm were evinced in all the branches of our activities, and a definite tendency towards progress was distinctly perceptible particularly in out-door games.

As usual, we joined the Inter-collegiate cricket held for the S. Roy Memorial Shield competition. Under the able captaincy of M. Roy we went up to the final match which was played in the Eden Gardens. In spite of our unfortunate defeat, it is remarkable that R. Sen, our ex-captain, missed a century only for one run. In addition to this, A. Roy, S. Mukherjee, A. Chatterjee and Jaiswal gave a magnificent display all through the season. C. S. Basu, our ex-Athletic Secretary, and A. Dutta, our ex-Union Secretary deserve appreciation for the flawless management specially of these three days' game.

Our Hockey team too gave a good demonstration in the Inter-Collegiate Hockey tournament under the efficient leadership of M. Roy, S. Roy, R. Biswas, J. Barua, A. Chatterjee and C. S. Basu also gave us a sincere and regular

service. In Volley-ball, Inter-college Table Tennis and also in Tennis our team deserves no less encouragement.

The College Basket-ball team participated in the Inter-collegiate Basket-ball League and Knock-out Tournament. For the first time, the C. U. Law College team became the League Champion for the year 1951, under the able captaincy of Jatin Barua. Having equal points with the Charu Chandra College Team in the League Table, our Team won the Championship in the tie-match by a considerable margin of 28 to 7 points. Another victory worth-mentioning in the season was over Scottish Church College in which our team won by 68 to 12 points. Our team also played an exhibition game at Serampore with the Serampore College Team on the latter's invitation. Amongst those who assisted our team to achieve victory, mention may be made of K. P. Ninan, A. Dey, P. M. John, N. C. Gohain, M. Misra and P. Mukherjee, P. M. John being the highest scorer of our side in the season. Mention may be made here of Asoke Choudhury who achieved Championship in Inter-College Billiard competition.

We are sorry that our Rowing Club could not give a good account of itself, although we are confident that a better crew will be formed under the captaincy of our present Captain J. B. Ghosh Dastidar.

In foot-ball we went up to the Semi-final in Elliot Shield and Heramba Maitra Shield under the splendid captaincy of R. Guhathakurata. We played exhibition matches at Purulia and Jhalda and entered the Sitanath Memorial Shield at Murshidabad. In these matches A. Ghosh, C. S. Basu, N. Roy, J. Barua, M. Misra, D. Ghosh, R. Biswas, A. Mukherjee, S. Nandi and others gave a brilliant display of skill in foot-ball. We were proud in having R. Guhathakurata amongst us. Our beloved "Runu" went out on a Far-East Tour as one of the players of the All-India Team last year and played in the Asian Olympic Game this year. We wish him all success in his career. In spite of these, we must admit with regret that our progress in foot-ball was not up to the mark.

In our Annual Sports the number of competitors was quite satisfactory. R. Biswas had the honour of winning the individual championship, and J. Barua too deserves congratulations along with him. Also in this aspect of the activities of our Athletic Club we are indebted to C. S. Basu for his untiring energy in management. Thanks are due to Mr. Justice P. N. Mukherjee who presided over the function. Our special and heartiest thanks are also due to Dr. P. N. Banerjee, our Principal, to Sri A. C. Karkoon, our Vice-Principal and Dr. B. Roychaudhuri, Professor-in-Charge of games of the College, Sri Mrityunjoy Basu and Sri Sribhusan Mitra for their whole-hearted co-operation and sincere guidance which will surely lead us to greater success.

CHANDI BASU,
AMULYA MUKHERJEE,
AMAR BANERJEE,
Jt. Secretaries,
University Law College Athletic Club.
The 1st December, 1951.

ANNUAL REPORT OF THE LAW COLLEGE GYMNASIUM

The College Gymnasium has been furnished in the current year with more useful and up-to-date instruments. Attendance of students has considerably improved, both in point of numbers and of regularity.

Some of our members have qualified themselves with distinction in local competitions. In the last S. K. Gupta Cup Competition (session 1950-51), about thirty participants from the Law College contested and among these

candidates Sailendra Nath Ghose, Debendra Nath Mukherjee, Tapanangshu Mukherjee, Sachin Basak came out first, second, third and fourth respectively. Sailendra Nath Ghose was adjudged first for his demonstration of muscle control and won the first prize. The S. K. Gupta Cup, which is awarded for the best physique, went to Sachin Basak, who, however, came fourth in the general contest.

Mr. Bishnu Charan Ghose, the noted physical culturist of India, acted as the Chief Judge in this competition. The function was presided over by the Vice-Principal of the Law College, Mr. A. C. Karkoon. Others present on the occasion included Prof. R. M. Majumder, President (Athletic Council), Prof. S. A. Masud, Vice-President, and Prof. B. Raychoudhury the ex-President. Prof. S. K. Gupta graced the occasion by his presence and encouraged the competitors, at the end of the function, to build up their own physiques for the creation of a mightier Bengal of tomorrow.

We, the members of the gymnasium, are fortunate enough to have in our midst a physical instructor of Sri Monotosh Roy's skill and eminence. Sri Roy has been serving this Law College Gymnasium for the last few years and has earned the love and respect of all the members with his earnest devotion and amiable nature. Sri Roy who recently went to London to contest for the title of Mr. Universe has come back with the coveted distinction and is once again amidst us. He was awarded the highest points (384 out of 400) among all contestants and came out topmost among all participants in his own group. In the general contest, Sri Roy came out third. Reg Park of England who was adjudged first in points of grace and beauty, however, scored fewer points (381 out of 400) than Sri Roy. This is no mean achievement on the part of Sri Roy and we join with the rest of the country in warmly congratulating him on his success. While in London, Sri Roy gave a demonstration of muscle-control and Indian *asanas* at India House. An appreciative group of spectators including Mr. Krishna Menon, the High Commissioner for India in London, were present on the occasion and gave Sri Roy a mighty ovation. Sri Roy and his party were later given a formal reception by the High Commissioner.

Lastly, it is highly gratifying to note that Sailen Ghosh of our Gymnasium who participated in the Mr. Hercules contest came out second in the general contest and first in his own group. We congratulate Sri Ghosh on his success and express the hope that, in future, he will win fresh laurels, thus adding to the pride and inspiration of the students of this institution.

JYOTISH MOJUMDER,
ANATH BANDHU PAUL,
Joint Secretaries.

OUR UNION

The Union owes a word of apology for the delay in organising the Annual Re-Union function this year. Unlike previous years this time the Union has not been able to arrange for the function before the Summer recess. The existing members of the Working Committee have come to office in the latter part of April, 1951, and as such it has not been possible for them to celebrate the said function in less than two weeks' time. However, the Annual Re-Union of the college was held at the Senate Hall on the 11th of August, 1951, with Principal Dr. P. N. Banerjee in the Chair and with the Hon'ble Mr. Justice P. B. Mukherjee of the Calcutta High Court as Guest-in-Chief. The Hon'ble Mr. Justice R. P. Mookerjee, the Hon'ble Mr. Justice S. N. Banerjee and the Hon'ble Mr. Justice H. K. Basu and some Advocates of the city were also present. It would not be out of place to mention that this time maiden efforts were made to contact all the ex-students of the college through the Press and by approaching each individual member of the Bar Libraries. Moreover, perhaps for the first time since the Re-Union meeting started in the year 1942-43, four members among the ex-students were appointed members of the Re-Union Sub-Committee and it is needless to mention that their services were of immense value.

To put it in a nutshell, the function was really a happy gathering and inspite of the heavy pressure of the audience, the Union dared arrange for light refreshments for every one assembled and the function met with a splendid success.

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The Annual Legal Conference was held on the 15th of September, 1951, at the Asutosh Hall (Cal. Univ.) and the Union is proud to have had the Chancellor, His Excellency Dr. Kailash Nath Katju as President. The Speakers of the day were the Hon'ble Mr. Justice S. N. Banerjee, Vice-Chancellor, Calcutta University, Sri R. M. Majumdar, President of the Union, Sri Atulchandra Gupta, Advocate, Prof. Hiren Mukherjee, Barrister-at-Law, Sri Sankar Banerjee, Barrister-at-Law, Sri Jyoti Basu, Barrister-at-Law, M.L.A., and Prof. H. C. Dhar, Advocate.

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A General Debate among the students of the college was held on the 27th September, 1951 and three Prizes were awarded for the best three speakers. The recipients of the Prizes in order of merit are Sri Sudhansukumar Dasgupta, 3rd-year student, Sri Syamsundar Mahapatra, 2nd-year student and Sri Mihirkumar Mukherjee, 3rd-year student.

The Union is endeavouring to organise the All-India Debate for the award of the famous Asutosh Trophy in the middle of December next when we expect to receive response from all the Universities in India.

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I like to add that this year for the first time the Union arranged for a break-up social on the closing day before the Pooja Holidays. We are proud to mention that the function was a success.

We also expect to arrange for the Annual Social and Drama in January next.

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Lastly the most important thing is that the Union has started a Students' Aid Fund this year for the needy and meritorious pupils of the University Law College. This Fund is swelled up with a grant from the Union Fund itself, besides subscriptions from other students of the college. We sincerely hope this will encourage many students of Law to complete their study.

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The Union chalked out a new plan for renewing the publication of the synopses of lectures and the selections of leading cases for helping the law students, in their studies. We offer our heartfelt thanks to the college authorities for accepting our proposal in this connection.

Chandrakumar Banerjee,
Joint Secretary (Magazine).

CALCUTTA UNIVERSITY LAW COLLEGE UNION
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1946-1949—Professor B. Raychaudhuri.
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1947-1948— ,, Durgaprasanna Chakrabarti.
1948-1949— ,, Birendranath Mukherji.
1949-1950— ,, Debaprasad Chowdhary. / Chandi Sadhan Basu.
1950-1951— ,, Chandra Kumar Banerjee.

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1928-1929— Sri Abinash Bhattacharyya.
1929-1930— ,, Sreepada Majumdar.
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1935-1936— ,, Satyen Home.
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1940-1941— ,, Bimalchandra Dutt (*Resigned*). / Suhrid Dutta.
1941-1942— ,, Kumudkanta Ray (up to November). / Sunilkanti Paul.
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1943-1944— ,, Siddhartha Roy.
1944-1945— ,, Amalkumar Sen (up to November). / Bhaskar Mitra.
1945-1946— ,, Amaresh Mukherjee
1946-1947— ,, Biswanath Bajpayee
1947-1948— ,, Rabin Basak
1948-1949— ,, Durgaprasanna Chakravarty.
1949-1950— ,, Asoke Krishna Dutt.
1950-1951— ,, Satya Narayan Roy.

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University Law College

MAGAZINE

C A L C U T T A

VOL. XXI

MARCH, 1953

SESSION 1951-52

Editor-in-Chief

Prof. P.C. Chunder, M.A., B.L.

Editor

M.L. Jhunjhunwala, M.A., LL.B.

UNIVERSITY LAW COLLEGE MAGAZINE

1951-52

Editor-in-Chief :
Prof. P. C. CHUNDER, M.A., B.L.

Editor :
M. L. JHUNJHUNWALA, M.A., B.Com.

JUDGE SUPREME COURT
INDIA

NEW DELHI
22nd December, 1952

Dear Mr. Jhunjhunwala,

I have your letter of the 19th instant for which I thank you.

I shall be extremely preoccupied with the work of the All-India Bar Committee during the ensuing Christmas vacation. It will therefore, not be possible for me to contribute any article to your Law College magazine.

I trust you will appreciate my difficulty. I, however, wish to send to you and other students of the Law College my very best wishes for their success in the profession they have chosen and are qualifying for.

Yours faithfully,

S. R. Das

49. Nothing in this Constitution shall invalidate any act, order, instruction, of the Working Committee, the Central Council or the office bearers of the union, if such act, order, instruction is done or purported to have been done in good faith before the commencement of the Constitution.

50. This Constitution shall come into force on and from the 16th March, 1953.

Ignorance of the law excuses no man : not that all men know the law, but because 'tis an excuse every man will plead, and no man can tell how to confute him.

—John Selden, Table-Talk.

CALCUTTA UNIVERSITY LAW COLLEGE UNION

MEMBERS OF THE RESPECTIVE SUB-COMMITTEES 1951-52

The following is the complete list of Sub-Committees associated with the different Joint Secretaries, which was passed by the Central Council on the 26th July, 1952. The President and the General Secretary of the Union are the *ex-officio* members of all the Sub-Committees.

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Ashim Som

The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets and to steal bread.

—Anatole France, Crainquebille.

PRESIDENTS, EDITORS AND GENERAL SECRETARIES

OF THE

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{ Amal Krishna Saha (Offg.)

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CALCUTTA UNIVERSITY LAW COLLEGE UNION, WORKING COMMITTEE 1951-52

Front Row (*L.* to *R.*)—Amal Krishna Saha (Genl. Secy. Offg.), Prof. Pratap Ch. Chunder (Vice-President), Prof. Bomkesh Basu (Vice-President), Prof. Ramendra Mohan Mazumdar (President), Shri S. N. Banerjee (Vice-Chancellor), Sri A. C. Karkoon (Vice-Principal), Prof. S. A. Masud (Vice-President), Miss Jyotsna Das (Jt. Secy., Social Service), Sudhindranarayan Dasgupta (Jt. Secy., Debates).

Back Row (*L.* to *R.*)—Hari Prasad Singh (Jt. Secy., External Affairs), Dilip Kumar Dutta (Jt. Secy., Drama), Bhabani Prasad Roy (Jt. Secy., Forum), Bidhan Maulik (Jt. Secy., Office), Mrinal Kanta Sengupta (Jt. Secy., Cultural), Sambhunath Mukherjee (Member), Madanlal Jhunjhunwala (Jt. Secy., Magazine), Sajjad Ali (Member), Awadheshnandan Chaudhury (Jt. Secy., External Affiairs), Amit Sen Roy (Jt. Secy., Social), Asoke Kumar Mitra (Member), Sridhar Ranjan De (Jt. Secy., Re-Union), Hrishikesh Sarkar (Member), Ajit Chatterjee (Jt. Secy., Students' Aid Fund), S. M. Ghooi (Jt. Secy., Legal Conference).

Absent—Dr. P. N. Banerjee (Principal), Sahadeo Misra (Retd. Genl. Secy.), Amulya Mukherjee (Jt. Secy., Re-Union).

UNIVERSITY LAW COLLEGE MAGAZINE

CALCUTTA

Vol. XXI MARCH, 1953

The Editor Speaks

The publication of the College Magazine holds an important position in the manifold activities of the Law College Union. Every year we bring out one. But we are conscious of our limitations and the fact that all the issues have not achieved the standard we want to maintain. This year we have spared no pains to make this publication a success so as to behove of the institution of which it speaks. We have not only changed the quality of printing but our efforts have been directed towards an all-round improvement. In short, we shall feel honoured if the magazine is approved and accepted by our well-wishers.

All-India Bar Council and an All-India Organisation of the Lawyers

It is a happy news that a Committee of Enquiry has been appointed by the Government of India to consider the formation of an All-India Bar and to go into other burning problems of the legal profession in our country.

In our opinion, as has been well suggested by Sri M. C. Sitalvad, the Attorney General for India, an "All-India Organisation of the Lawyers" is needed for our country on the footings of the American Bar Association or on the lines of the Legal Council of Australia. This may be an autonomous body and in it, representation of the lawyers will be made from the various constituent States of India. It will be a sort of guardian and adviser to the 'All-India Bar Council' which will be a statutory body under the control of the Government with powers to lay down rules for the proper legal education, enrolment of members to the Bar and the exercise of disciplinary powers over them. This autonomous organisation of the lawyers will wield great influence in framing future legislation and will also exert powerful voice in the country's social, economical and political spheres. It will not only be helpful to the legal profession but also in the administration of justice and the maintenance of liberty of the citizens.

Law Students

It is rather regrettable to note that the standard of the Bar is deteriorating day by day. Lawyers are many, but good lawyers are few. The size of the Bar is fast increasing but affecting the efficiency adversely. This may obviously be accounted for the zeal and interest which the so-called law students show towards their studies. When one receives B.A., B.Com. or even B.Sc.

degree, the most indefinitely definite course open to him is to seek admission into Law College. The result is that the College benches are studded with sure law students but they are not serious law students. Law studies are meant for those students who "by living like a hermit and working like a horse" may fare well in their profession. The degree on law is not so attractive or fanciful which should attract everybody's mind. The study of law is very hard if we engage ourselves fully in it.

Whither LL.B. Course ?

While criticising the lack of zeal for study amongst students, it is in the fitness of things to deal with some of the drawbacks or handicaps which obstruct the real knowledge of a law, the law and laws. The main problem of legal education which confronts us to-day seriously is that there is an unwanted disparity in the number of the subjects and the syllabus prescribed in different universities in India. Most of the universities have kept pace with the change in time and have therefore, introduced a number of subjects which are of great topical influence such as Labour Laws and Taxation Laws. As ill-luck would have it, the University of Calcutta is carrying on with the same hoary three-years course, as were prescribed by great Sir Asutosh Mookerjee. The omission of Company Law, Taxation Laws, Mercantile Laws and Labour Laws etc., is a serious one and the Law graduates are hit hard when they actually take up the profession. It is high time that the course should undergo a reform and reorientation. Committees, if already constituted, should speed up their work so that the students may be benefited as early as possible. The introduction of International Law and Private International Law is again an urgent necessity.

Next, the professors are expected not only to teach law but also to train students in such a way that they may turn out to be good lawyers. In this connection, a close relationship between the teacher and the taught will be of an immense value. Let the professors take wider interest in the theoretical as well as the practical side of the study of law and let the students gird up their loins to follow their professors with utmost sincerity.

LL.M. Degree

LL.M. course is a 'much-talked' and 'less-worked' affair. They say that success in this examination is a monstrous task, if not Herculean. Every year an unlucky few rally their forces to fight out this great strife but they meet with a sad end. The course is becoming unpopular. It is said that the line is blocked for the last three years and we know not when it will be cleared. Faults may be with the candidates to the extent that they do not pay the proper attention to their hard studies, but there are other factors which reveal a very unsatisfactory state of affairs. The course, here too, is out of date and the books prescribed do not cover the full course. Moreover, the candidate for this examination finds himself in an ocean with no navigator to guide. We may be proud of our worthy Principal who on occasions takes pain to guide such candidates. But this does not solve the problem in any way. Either regular classes should be held for this purpose or the University should develop and create interest in this examination so that it may conveniently prove to be useful and effective. We hope that this will receive due attention from our College authorities, too.

The Language Problem

Then comes the Language problem. The legal education must be imparted in an uni-

form language all over India which can be used as the court language too. There is a great deal of controversy over this matter whether Hindi should replace English in courts. Some universities, where Hindi is their regional language, have been imparting legal education in Hindi and the proceedings of the courts in those areas are also conducted as far as possible in Hindi. We do not deny the importance of some Indian language as the official court language, but then, Hindi or any other Indian language has not yet been enriched to a standard by which legal education and specially the proceedings in the courts can be efficiently conducted. Hence, in our humble opinion, English may be continued as the medium of instruction at least in law colleges and also it may continue as the court language all over the country, till Hindi or any other Indian language is made rich in legal literature.

The Revival of 'Gram-Panchayats'

While inaugurating the tenth annual conference of the Bengal Lawyers' Association on the 28th December, 1952, the Hon'ble Chief Justice of the Calcutta High Court, Sri Phani Bhusan Chakravarty expressed the opinion that if the courts of law were replaced by primitive institutions like 'Gram-Panchayats' and 'Panchayat Committees', the legal profession would completely disappear and its place would be taken by a class of people whose character and position would better be left undescribed. This observation of the learned Chief Justice does not appeal to us in toto. The legislators, in our opinion, while framing the statutes should not overlook the fact that justice may be available with least possible delay and that too, at a minimum cost to the litigant public. We do appreciate that these institutions will not be so efficient to conduct a case in the way a court of law would do and in cases, justice may not be done to the parties due to lack of integrity and ability among the village folks. But, then, these institutions will be more or less a domestic forum in the nature of arbitration and conciliation court and the money, time and energy of the litigant public will be considerably saved. When the illiteracy among the rural population will be removed in course of time they will prove to be very useful training ground. The legal profession should sacrifice, in the national interest, a part of its legitimate privileges.

Legal Aid Society

India is a land of poverty with millions who do not get even a square meal a day and we regret that justice is not easily available to them. Even if a poor wins a case, he finds at the end that he is a loser because of heavy litigation cost. We invite the attention of the members of the legal profession in this regard. The scheme of 'Legal Aid Society' is a step which must be encouraged by all means so that justice may be available to one and all at a minimum cost. A net-work of these societies should be spread all over the country. We are deeply grateful to Sri R. S. Naik, the retired Chief Justice of the Hyderabad High Court for his contribution of an article on 'Legal Aid Societies' which appears elsewhere in this journal. We believe it to be of immense value to our readers.

The Student

It is often said that the standard and efficiency of the students are deteriorating day by day. But the matter, we think, needs careful thought and serious consideration. We respectfully do not agree with the view that the students are suffering from intellectual degradation. On the contrary, it may

legitimately be urged that the desired progress has not been achieved—because of the economic clog on the Indian social life today. A contemporary student continuously listens to the droll of want and poverty —unnourished, ill-fed and denied with the common amenities of life and thus, he submerges himself in the whirlpool of frustration and non-fulfilment. He finds his family peace gone, his aspirations and dreams become a mockery. In spite of all the sufferings, he will have to learn and he learns. We appeal to the politicians, statesmen and to the Doctors of Social Sciences to purge the country of this malady and we promise progress, advancement and valour.

Besides, the University of Calcutta is enhancing the examination fees and the students protest against it. We are facing an unfortunate conflict with the Varsity authorities but not with our beloved *'Alma Mater'*. We do not want it, but we cannot help it. We should not be made the scapegoats in the altar of economic inequality of the State, caused and created by people who are not students.

Shifting of Law College

It is a welcome news that the Law College building is to be shifted to suburbs of Calcutta. We hope that we shall be better placed there. We feel that the new surroundings may enthuse new outlook among the students so that they may look forward with greater courage and conviction.

Union Constitution

One remarkable achievement during the present term of office of our College Union is the complete overhauling of the Constitution of the College Union. It will come into effect from the middle of March, 1953 when the new elections of the Union will be held. The system of co-option has been discarded and in future, two students will be elected from each section to the Central Council of the Union. For other important changes, the students may refer to the Constitution from the Union office.

Moot-courts, Library hours, etc.

We are glad to learn that our College authorities are moving the University authorities to introduce new facilities in the attendance of moot-court classes. The necessary percentage in moot-courts and in the general classes will be added together. This will undoubtedly help more students to sit for the examinations. We are all the more glad to learn that the authorities are printing the synopses of lectures and the leading cases which are not available in the Law Reports of the Library being worn out in course of years. Moot-courts, if properly conducted and if the students take interest in them, will be of immense help in their practical life.

We again express our happiness that the Library hours have been extended to 8 P.M. on representation made by our Union. We shall be happy if it is further extended to 9 P.M. whereby students will be much benefited.

Our Felicitations

We offer our felicitations to Sri P. B. Chakravarty on his appointment as the Chief Justice of the Calcutta High Court. He took the Master degree of this University in the first class in 1920. He is not only the permanent Chief Justice of the Calcutta High Court, but is a first non-barrister Chief Justice. Under the law, beginning from 1861 right down to 1950, the Chief-justiceship of the Calcutta High Court was reserved for a barrister of the Inns of Court in England. We also felici-

tate Sri Debabrata Mukherjee and Sri Gopendra Krishna Mitter, two of our former students on their elevation to the Bench.

We congratulate Professor S. P. Mitra for his election to the West Bengal Legislative Assembly. He was associated with our College since 1946, and was also one of our Vice-Presidents of the Union. We also congratulate Sri Sahadeo Misra, our retired General Secretary of the Union for his appointment as a Lecturer in St. Xaviers' College at Ranchi.

Our Thanks

We are deeply grateful to our Principal, Dr. P. N. Banerjee, Vice-Principal, Sri A. C. Karkoon, our President, Professor R. M. Majumdar, our Vice-Presidents Professor S. A. Masud, Professor B. K. Basu and Professor P. C. Chunder and also to Sri S. L. Sharma, M.A., B.L., Advocate, an ex-student of this College, who have helped us so much by their valuable and timely suggestions.

We offer our thanks to Sri S. Appu Rao, the Chief Editor, 'All India Reporter' and other students who have contributed articles, the flesh, blood and bones, to our magazine. We are also grateful to our Superintendent of the College, Sri Mrityunjay Prasad Basu and the staff for their cordial help in the publication of the magazine. Lastly, we are grateful to our friends and colleagues, Sri Amal Saha, the General Secretary (Offg.), Sri Bidhan Maulik, Sri Susil Bhattacharyya, Sri Sudhindra Das Gupta and Sri Ajit Chatterjee who have helped us immensely in the publication of the magazine.

M.L.J.

From Unreal lead me to Real,
From Darkness lead me to Light,
From Death lead me to Immortality.

—Vrihadaranyaka.

LEGAL AID SOCIETIES

By

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In modern times the need for the formation of Legal Aid Societies has been recognised in all the advanced countries of the world, and in many of them several such societies have been working for years. The lawyers in India at their different Conferences have also passed resolutions in support of the establishment of such societies, and there are similar organisations working already in big cities like Bombay and Calcutta. The more advanced a country the more complicated the legal procedure the greater the need for such societies. Particularly in free and democractic countries they are indispensable.

In fact, Legal Aid Societies can more appropriately be called "Freedom Aid Societies", because I believe in modern days no free country can maintain its freedom for long, nor can run the administration smoothly without the help and co-operation of such organisations. Rightly enough the very first aim of our Sovereign Democratic Republic, as mentioned in the preamble of the Constitution is to secure to all its citizens : Justice : Social, Economic and Political. This has been declared as the solemn resolution of the people of India. It, therefore, becomes the sacred duty of every citizen of India to see that this goal is achieved as soon and as fully as possible.

The aim of all good judicial systems, and the pride of all civilized Governments has been to establish and to maintain the equality before law of all citizens, and to see that they are equally protected under it. This is as it ought to be but, at the present time we find that litigation is far too expensive and the laws' delays are intolerable. Particularly for the poor it is prohibitive. Strictly speaking this in practice means that there is neither equal justice nor equal protection. The provision to file suits in "Forma Pauperis" does not give real relief and certainly is not adequate. Naturally, in such circumstances the poor lose faith in law courts, and feel dissatisfied and become frustrated, their respect for law and order is lessened, they easily fall a prey to any unscrupulous agitation to subvert the existing order of things. In a democratic country this dissatisfaction can show itself in a very ugly form, and cause a great deal of harm to the people. If one carefully analyses the causes of the activities of the unsocial elements and the consequent disturbances in the country he will find that they derive their support from the accumulation of wrongs, and injustices suffered by the poor. The best way of fighting their violent activities is to see that justice is made easily available to them. When legal procedure cannot be made simpler it becomes the duty of the Government to provide necessary legal aid and mitigate the evil of unavoidable delays and heavy costs. In view of the appalling poverty and ignorance of our people, I feel that the matter of Legal Aid is of paramount importance that it deserved a specific directive in our Constitution.

If this idea of Legal Aid in all its aspects is properly carried out, it will prevent many people from entering into needless litigation, and save the consequent waste of time and energy. Normally people will not go

to the Court if their legal position is clearly explained to them, and unscrupulous persons do not have a chance of leading them astray. Men who plunge people into ruinous litigation and cause misery to so many families are a great danger to society and it is our duty to take steps to protect people from them. As Judge H. Grossman once observed—"Four out of five potential litigants will settle their disputes the first day they come together, if you put the idea of arbitration into their heads." The establishment of proper Legal Aid Societies is a great step in that direction. It will prevent avoidable litigation and make unavoidable litigation fair and just to all.

I appeal to all lawyers and particularly the juniors to take great interest in this movement. It will serve as a training ground for the juniors not only to become successful lawyers but even political leaders, if they are so inclined. Those who work in such societies will come in contact with many people, and have an opportunity of serving them and establishing a good reputation for themselves. We must bear in mind that in these days it is not possible for one person to be master in all branches of law. We want specialists in the legal profession just as we have in the medical line. To deal with any case properly, the lawyers have to pool their knowledge, and experience. The Legal Aid Societies will provide an opportunity to juniors, and seniors to come in contact with each other. They could specialise in some branch of law and work as it were in partnership with their brother lawyers. I am sure, in future our lawyers will feel more and more the need for working in partnership.

Life is becoming so complicated these days with all the various laws and rules that at every step one feels the need for legal advice. The legal profession has very high traditions of gratuitous service and is supposed to be one of the honourable and noble professions. It should be the pride of lawyers that they are ever ready to give aid to the rich as well as the poor. They should show by their conduct that they are champions of justice, and not mere traders in it. That they help in dispensing justice, and not in its sale. That they are people who are out to establish peace and happiness and not those who live on the troubles and misfortunes of others.

In other fields of activity we sometimes see the sad and disheartening spectacle of people taking advantage of the ignorance of their fellow countrymen to secure position and power for themselves. Let us lawyers be on our guard against such a charge. Our profession can be noble and honourable only if carried out conscientiously and with a very high sense of honour. Members of the legal profession have to show that they are not mere mercenaries doing their work for money but are by training men of high character, patriotic and selfless-soldiers of humanity, fighting social battles and protecting their fellow men from social enemies. They are indeed the guardians of the liberties of the people. Whether it be in law courts or legislative assemblies or other associations, it is the lawyer that has to lead and work for the promotion of all those activities which contribute to the maintenance of our independence and the realisation of the high ideals set out in our Constitution. Not only has our law to be developed to suit the changed conditions but the lawyers must rise to the occasion by raising their own professional standard.

The chivalrous instinct in man has had throughout the ages a peculiar appeal of its own. To help the helpless and strengthen the weak has always been a great attraction for men of strength and character. In the past many brave men had to go to war and risk their lives and everything in the cause of JUSTICE and FAIR PLAY.

Thanks to our strong Army the civilians are not called upon to fight military battles. The battles of law courts, and legislatures are of no less importance for the protection of the weak, and afford plenty of scope for the exercise of chivalrous instinct. Even those who are not lawyers can satisfy this urge by taking an active interest in these societies.

I also appeal to the Government to lend their fullest support to these organisations. Just as *Medical Relief* is made available through Hospitals and Dispensaries, Government should help in making *Legal Aid* freely available to its people. Very often the want of legal aid does more harm than want of other facilities. By helping to provide *Legal Aid* the Government will make justice available to all its citizens and at the same time strengthen its own foundation, and take the wind out of the sails of unsocial elements.

India is a vast but a very poor country. We have to bring justice within reach of every one of her teeming millions. Justice should not be looked upon as a source of revenue nor should stamp duty be collected in order to meet the cost of judicial administration. The only object of "Stamp duty" ought to be to prevent frivolous litigation. If justice could be made more easily available to the people, then Government would need to spend much less on charities and doles, and also save the self-respect of their people. Now-a-days, Government is giving high priority to "Social Service" and need I say that LEGAL AID is one of the best of "Social Services". This form of Social Service will benefit the State as a whole and wipe out the unholy spectacle of justice sometimes being only within the reach of the rich. We often see that a poor man even when he wins a case finds he is a looser because of the heavy cost of litigation. As Voltaire said "I never was ruined but twice—once when I gained a law-suit and once when I lost one."

Regard for the public welfare is the highest law.

—(*XII. Tables*:—*Bacon, Max., reg. 12.*)

HINTS ON THE MODE OF USING LAW REPORTS AND OTHER LAW BOOKS

By

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Dr. Johnson is credited with the observation that a good lawyer is one who knows where to find the law. In a recent American Text book occur the following words which are quoted as those of a learned American Judge :—"I have been amazed at the helplessness of Law students and even lawyers when they go into a Library to search for authorities. A good lawyer is one who knows where to look for the law and after he has found it knows what to do with it." In the same Book, another American Judge has been quoted as follows :—"One who does not know how to find the law will not know the law." Thus, when the Editor of this Journal desired me to contribute an article on "How best to refer to Law Reports, Digests, etc.", I felt that the request was marked by a true sense of realism.

Law Graduates need hardly be informed that broadly speaking, all our law in India falls into two divisions, Statute-Law and Case-Law. There are about 500 Acts on the Statute Book which are of general applicability to the whole of India. Besides this, there are Statutes of Provincial applicability which are in force in the different States. As regards the All India Statutes, we have a Government Publication which is known as "Unrepealed Central Acts", published by the Government of India and which is available with the Manager of Publications, Delhi. This Book consists of 10 Volumes and is priced at Rs. 60/8/-. It is brought up to 1948. The Acts in this Book are arranged in a chronological order. This means that in this Publication the required Act cannot be referred to unless the name of the Act is known. But there is an old publication of the year 1941 issued by the Government of India which contains a topical index of the several Acts of the Central as well as Provincial Legislatures. From this the name of the required Act can be found out. But this book is not up-to-date. The title of the Book is "Index to Indian Statutes in force", and the price of the Book is Rs. 3/12/-.

In addition to the "Unrepealed Central Acts", there are also various Government Publications giving the Provincial or State Acts which are known as Codes, e.g., Madras Code, Bengal Code and so on. In these Publications also, the arrangement of the Acts is chronological and not alphabetical according to the titles of the Acts.

In addition to the Government Publications above mentioned, we have collections of Acts published by private Publishers. The characteristic of these Publications is that the Acts are given in the alphabetical order of their titles and not in the chronological order. Further, these Publications contain also notes on case-law bearing on the different Acts. The most important of these Publications are the A.I.R. Manual, published by the All India Reporter Ltd., Nagpur and the Civil and Criminal Court Manuals published by the Madras Law Journal Office, Madras. The A.I.R. Manual is a consolidated Publication running in 8 Volumes, and containing both Civil a

Criminal Acts. The Publication also includes all Provincial amendments. The Book is up to 1948. For the subsequent period the Acts of the Central Legislature can be got from the Journal Section of the A.I.R. These Acts are given in the chronological order and in the order of the numbers of the Acts of each year.

The Statute Section or Section 1 of the Indian Digest, published by the All India Reporter Ltd., Nagpur, from 1948 gives a topical index for the subjects dealt with in the Central as well as State enactments. By referring to this topical index one can find out the latest Statutory enactments on any topic.

In addition to these Publications there are various excellent Books devoted to each Act separately and providing a Commentary based on case-law on each Act dealt with. For instance, we have the A.I.R. Commentaries on the Codes of Civil Procedure and Criminal Procedure, the Transfer of Property Act, the Limitation Act and so on. These Books also will be useful so far as the Statute Law together with the Case-Law therein are concerned.

Now coming to case-law—the other broad division into which the body of our law falls—first, there are the Reports. As a learned writer on Jurisprudence, Professor George Whitecross Paton of the Melbourne University has put it, "Cases provide the life-blood of the Law". So the importance of Law reports in studying any question of law and in preparing a brief cannot be exaggerated.

In India, we have had Law reports for more than a century now. We have reports even of the decisions of the old Courts before the establishment of the High Courts, under the title of "Indian Decisions, Old Series" published by the Law Printing House, Madras.

Next, we have 'Moore's Indian Appeals', 14 Volumes, which contain decisions of the Privy Council from 1836 to 1872.

Among other reports may be mentioned the 'Sutherland's Weekly Reporter', containing the cases of the Calcutta High Court, the "Madras High Court Reports", the "Bombay High Court Reports", and the "North West Province High Court Reports" (for Allahabad High Court).

From 1875 we have the 'Indian Law Reports Series'. In 1875 was passed the Indian Law Reports Act and since then we have been having a Series of reports published under Government authority for each High Court and this Series is known as the Indian Law Reports—Calcutta, Bombay, Madras, Allahabad and so on. Originally, these reports were cited as "32 Calcutta-1" and so on. But now they have adopted another mode of citation which is as "1950-Calcutta 1" and so on. Obviously, this latter mode of citation is much better as it indicates the year of the report. We have the authorised series of reports for almost all High Courts in India now. The authorised series also reported the decisions of the Privy Council on appeal from the respective High Courts.

I have already referred to the 'Moore's Indian Appeals' containing the decisions of the Privy Council. After the Moore's Indian Appeals we have the 'Law Reports —Indian Appeals' containing decisions of the Privy Council. It will be within the knowledge of the readers of this Journal that the Privy Council in England is no longer the Court of final appeal for India after the advent of independence.

In addition to the Government-authorised reports, above mentioned, there are a number of private Journals reporting the decisions of the respective High Courts and of the Supreme Court. Among them, as examples may be mentioned the Calcutta Weekly Notes, Calcutta Law Journal, Bombay Law Reporter, Madras Law

Journal, Madras Law Weekly, Allahabad Law Journal and so on.

In addition to these Provincial Journals, there are also some all India Journals, chief among which is the All India Reporter which publishes the judgments of all the High Courts in India and of the Supreme Court. The All India Reporter also publishes the Criminal Law Journal of India which contains the criminal cases of all the High Courts in India.

Mention may also be made here of the Supreme Court Reporter which is published under the authority of the Supreme Court of India, and of the Supreme Court Journal published by the Madras Law Journal Office.

The All India Reporter forms one continuous series of reports from 1914 and for nearly a period of 40 years it contains practically the whole of the case-law of India. It is divided into Sections according to the Courts. The Volumes are bound and numbered according to the Courts.

I must now pass on to the next important kind of publication which a practising lawyer or a student of law will have to use in order to study the law on any point. I am referring to the Digest. In India we have a Digest for practically the entire case-law of India. First, we have Sanjiva Row's 'Century Civil Digest' and 'Criminal Digest' which contain the Digest of Civil and Criminal cases from the earliest period to about the first decade of this century. The subsequent period is covered by Chitaley's Indian Digest—(1909 to 1920), The Decennial Digest (1921-1930), The Indian Digest (1931 to 1946) and the Indian Digest (1946 to 1952). For the current cases we have the 'Yearly Digest' published by the Madras Law Journal Office. There are also various Digests published by the Madras Law Journal Office for different periods.

Perhaps, it will not be out of place to state briefly the general method of a Digest. Broadly speaking, a Digest is a collection of the Head-notes which are found in the reports. A Head-note is a statement of the law laid down in each case which is reported. The Headnote is given at the beginning of each report. These headnotes are collected under appropriate topical or Statutory headings in a Digest and are arranged in alphabetical order. So a person trying to find out the law on any point in a Digest refers to the appropriate heading and searches under the heading. Usually in India, especially in the 'Indian Digest' published by the All India Reporter, the Statutory system of headings is adopted. This means that when, for instance, a case relates to *res judicata*, the point is given under the Civil Procedure Code, Sec. 11 and not under the heading *res judicata*. Experience has shown that this system is very suitable to India and is more convenient. When there is no Statutory heading available for a particular matter, a topical heading is adopted. For instance, points of Hindu Law are given under the heading "Hindu Law".

When a question has to be studied, the usual course is to refer to the latest Digest and search under the appropriate heading. It may be necessary to search under different possible headings. It is best to make the search in the latest Digest first and work backwards so that the latest law may be immediately seen.

A Text Book, or law Commentary especially an exhaustive one, is also a useful source from which precedents can be traced. A text book or commentary may be found more convenient and useful in some cases than a Digest. A Digest will give only the cases for a particular period. But a text book or Commentary will give the whole case-law on the subject. Moreover, a text book or Commentary will explain the subject, which a Digest will

do. But both Digest and text books will have to be studied in order to be thorough. All commentaries and text books contain topical indexes which will help a person to find out where a question is dealt with in the book. Here also, different alternative headings will have to be searched. A topical index is usually called a "General Index".

When a case is picked out from the Digest or a Commentary or Text Book, the judgment must be studied and the authorities cited therein should be noted. Then each of these authorities must in turn be studied in the same manner. It must be seen whether any particular authority has been overruled or reversed. There is a converse method also which has to be adopted. After a case is studied, it must be seen whether it has been followed or dissented from or overruled in a subsequent decision. This can be found out from a good Text Book, usually. But the more sure way of doing it is to consult a publication like the subject-noted Index of cases, judicially noticed published by the Madras Law Journal Office or some similar publication. This publication, however, is not up-to-date. After the last year up to which the publication has been brought the yearly volumes of the "Yearly Digest" published by the Madras Law Journal gives a table of cases overruled, reversed, followed or otherwise judicially noticed in the decisions digested in that volume. The A.I.R. Volumes also contain lists of overruled and reversed cases. The Indian Digest for 1952, published by the All India Reporter Office, Nagpur, also contains such lists.

A Commentary or Text Book also usually contains a nominal table of cases or a table of cases according to volumes and pages. By using these tables one can find out in what part of the book a particular case is dealt with and one can also get further cases touching the question. Probably novices would require a little explanation here. It will often happen that you remember some case relating to a particular question. You can start your investigation on the basis of that case by following the above method.

I may also mention here that in the A.I.R. reports, what are known as "Annotations" are given under each point in the Head-note. These "Annotations" give references to portions of the A.I.R. Manual or Commentary where further information on a question can be got.

It may also be added here that in the A.I.R. reports, after the head-note of each case are given a list of cases which have been judicially considered in the judgment, with the paragraph of the judgment where the case is considered. This list can be used like this. Suppose on reading the Head-note of a case you remember another decision bearing on the subject. You may like to see what has been said about that decision in the present case. The above list will help you to do this.

Let us turn for a moment to England. For Indian lawyers, the two chief sources for studying English Law that may be mentioned here are Halsbury's Laws of England—Second Edition and the English and Empire Digest. As regards English reports, the All England Law Reports and the Times Law Reports may be mentioned as the chief publications which might be usefully referred to. These are 'unofficial' publications. Besides they have got also an authorised series of reports. These publications are for the *current* case-law. As regards the previous case-law, the "Revised Reports" and the "English Reports" contain the previous reports up to 1866. The "Revised Reports" are only a selection but the "English Reports" are a complete collection of all the old reports prior to 1866. For the subsequent period

Our Principal Dr. P. N. Banerjee.

AN ASPECT OF UNIVERSITY EDUCATION

By

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The education of a country may be, and often is, its policy, but it should never be permitted to sink into its politics. In the Preamble to the Written Constitution which governs the destinies of a sixth of the total human race, we have promised to secure to all our fellow citizens :

Justice: social, economic and political;

Liberty: of thought, expression, belief, faith and worship;

Equality: of status and of opportunity.

We have further more vowed to promote amongst all our fellow citizens, *Fraternity*, assuring to them as well as to ourselves "the dignity of the individual and the unity of the Nation."

In the Directive Principles of State Policy, our Written Constitution has given a solemn assurance to the people of India that the "State shall endeavour to provide, within a period of ten years from the commencement of the Constitution (*i.e.*, 26th of January, 1950), for free and compulsory education for all children until they complete the age of fourteen years." Three years have rolled by since the commencement of the Constitution, and yet eighty percent of the total population of the Indian Union is illiterate to-day. Education in India has not yet been able to shed its colonial character. It was the first casualty in world war no. II. Its wounds have not yet healed up. The Government of India at the Centre has not yet found it possible to spend more than one percent of its total revenue on education. Yet, we must all remember that if our freedom has to broaden down from precedent to precedent, if the democracy which we have established in India has to thrive, then we must, after satisfying all the elemental needs of the population, give education our first and primary attention. This is the scientific age of planning, and we must plan our system of education on the basis of a system of democratic living. The education of the future must not only produce superman but also must afford opportunities of development to the common man. Education, in its different stages, is a unity and must be an effective means not only of national reconstruction but must also be imbued with the democratic spirit of the age and the social ideals which India with its glorious heritage holds so dear. The education in any country of the world unfolds in us our instincts which God Almighty has planted into the human system. It implies extension of opportunities of creativeness, of self-knowledge, of self-control and of moral independence. Education to-day stands on the cross-roads in a world fraught with fear and darkened by the lust of the power-politics. Two world wars of destruction in the course of a quarter of a century have undermined the social and ethical values of human life. A true type of education can alone raise human values and save human society from bondage. The regimentation of thought, unnecessary domination by the state policy, meticulous interference by politicians in any country of the world must be avoided. In our country we should not merely cast a longing lingering look behind. We must strike a balance between the past and the present, and we have to wage superman

fight against the onrush of time, the rusty and the crusted traditions of centuries and stri[illegible] fight in for us and for our beloved country [illegible] place among the countries of the w[illegible]. Impatient idealism regrets divorce betw[illegible]n our society and our system of education. It desires a fight rightly against undisciplined thought, running rampant throughout the country perhaps in a stage of transition from helotage to freedom. Does power-impulse dominate every walk of life ? Do we agree with the view that the entire national life in our country has been tainted with corruption and nepotism, that we have become narrow, petty and self-engrossed, thinking more of self than of community ? It is agreed perhaps on all hands that education and culture differ from knowledge and technical skill. Democracy, they say, does not function unless there is education. The last general election in India illustrated the truth of the proposition that inherited culture succeeds inspite of illiteracy. It is perhaps not realised by all that the electorate of India at the last general election had a size greater than the total population of the United States of America and was almost equal to the total population of the Soviet Republic of Russia. The elections went off peacefully and well. This was the result of the inherited culture of centuries and of our peaceful way of life. We have therefore no ground for despair about our future. We must have more education and we must have better education. We must have self knowledge, we must have self-control, so that India of the future may perform her duties towards mankind in a world, surrounded by fear and sorrow, perhaps, grovelling in a welter of blood and of national selfishness. I believe, you believe, with all the fervour of our souls that India of the future will have a great mission for mankind. That mission of peace and [illegible]dwill amongst men will be furthered only by the reorientation of our entire system of education.

What role will the Universities in India play in the future reconstruction, not only of our system of education, but our national regeneration ? More than a century ago, Thomas Carlyle, the great English writer, in his address to the students of the University of Edinburgh, described a University as a collection of books. Cardinal Newman characterised a University as a corporation of scholars. Libraries and museums do not constitute Universities. Corporations, after all, have no soul. A University must constitute a republic of letters. It will stand for an empire of ideas. It will lead the nation and yet it will be the first servant of the people. A University cannot live in isolation. A University must not only be a store-house of knowledge, but must be the disseminator of knowledge amongst the people of the country.

Put very roughly, there are four different types of University education in the world: One system deals with education as is necessary for the acquisition of knowledge and skill for the purposes of an empire. The second system is absolutely dominated by the state and believes in regimentation of thought—whether that thought is an expression of the political ideas or of the religion of that state. A third system of University education is extremely conservative in character, and believes in the doctrine of traditionalism. A fourth system believes in the doctrine of mass production for affording equal opportunities to the common man and believes in the regulation of a democratic way of life. Our pattern of University education in India cannot cut itself adrift from the old moorings of a mixed and plural society of the glorious traditions of a past history, nor can it be a bridge merely between the past and the present. It stands at the confluence of the glory that was ancient India and the splendour that

shall be the India of the future. Has the atomic age come ? If it has come, what would be the objective of science ? Will it be the destruction of the elemental human values, the fundamental basis of human freedom ? Or will science be harnessed to philosophy and will help in the flowering forth of the divine instincts in men and women ? The main purpose of University education in India, as elsewhere, must be the building up of men and women—men and women with human face divine, men and women with religious conviction and selfless devotion to the cause, not of a country alone, but of humanity in general. Education means faith, conviction, devotion.

In any scheme of reconstruction or reorientation of education, we must first of all think of the pupil and the teacher. We often dream of the past. Where is the Ekalabya of to-day who will cut off his forefingers as a gift to the *guru* of his vision, Dronacharyya, who declined to accept him as a pupil because he belonged to the ranks of the Non-Aryan ? Where is Uddalaka to-day who at the behest of his *guru* lay flat in a field so that the corn of the *guru* might thrive? The youth of my country ! I am no poet. If I were one, I would have sung in melodies the song of the youth of my country. I am no painter. If I were one, I would have painted in the glories of colours the youth of my country before which Madona's figure would have paled. I am no sculptor. If I were one, I would have carved out of the whitest of marbles the figure of the youth of my country. My work of art would have beaten Phaedias of old. And the teacher! Does he live in obscurity and contend with hardship ? "For him no trumpets blare, no chariots wait, no golden decorations come. He keeps the watch along the borders of darkness and makes the attack on the trenches of ignorance and folly. Patient in his daily duty, he awakens sleeping spirits. He quickens the indolent, he encourages the eager, he steadies the unstable. He is king of himself and servant of mankind."

The Universities in India may not have been dismal failures, but they have suffered from many defects. They have suffered from a pernicious financial anæmia. They have suffered from the effects of a colonial budgetary system which insists on enthroning a police state. The proposed establishment of the Universities Grants Commission in India may perhaps solve the problem of distribution of grants-in-aid from the coffers of the State. No Universities Grants Commission in any country in the world has control over allocation of funds. The proposed Universities Grants Commission in India, instead of being attached to the Treasury, as in the case of the United Kingdom, will be an annexe to the department of education. This departure, it is apprehended, will not help the Universities to the same liberal extent as in the United Kingdom. The proposal of the Government of India to exercise domination and control over all Universities, notwithstanding the injunctions contained in the written Constitution of India, with the professed object of equalisation of standards, is a threat to academic freedom without which no University in the world can flourish or prosper. It will be a profound error to have the same pattern for all Universities in India. India is a union, not a unity. Difference in culture, in language, in traditions, in habits of thought and behaviour, must find reflection in the constitution and the functions of the Universities in India they have to maintain a correspondence between the advancement of knowledge and the satisfaction of social needs. This does not imply that every University in India will for all times to come be a self-sufficient unit and have an empire of its own. It may be quite possible to co-ordinate the activities of different

Universities situated in different parts in India so that one University may be deemed to be the centre of specialised study and research in a particular branch of knowledge and another University might be regarded as an emporium of other specialised branches of knowledge and research. Adoption of this co-operative attitude on behalf of the Universities in India—based on free association and not on behalf of the patronised state control from the centre—will help in consolidating the fundamental national unity of India, will solve to a large extent the problem of diversity of regional languages, and it is hoped, will break down the barriers of history and discourage provincialism. If we have to maintain our hard-earned freedom, if we must strive to be in the vanguard of the nations of the world, we have to make countless sacrifices for the attainment and the consolidation of national unity in India. The claims of religion, perhaps interested motives of colonialism, have unfortunately bifurcated the fundamental unity of India. India never was and never will be a geographical expression.

University education in India suffers from its birth-pangs even to-day. The policy of neutrality adopted by our British rulers of the past in matters of religion led to the introduction of an almost Godless system of education in our country. In every University provision should be made for the introduction of some form of ethical instruction. Our Universities also suffer from the after-effects of the chaotic conditions of the world caused by the two world wars, and the over-emphasis placed upon politics on our Indian way of life. Under the present Constitution of India every adult citizen is entitled to franchise. The exercise of franchise involves some kind of participation in politics. The exercise of utmost academic freedom by our teachers and pupils cannot put a ban upon political thoughts or expression. But we must realise that the main duties of the pupil and the teacher would be overlooked if over-emphasis is laid upon politics. Many of our Universities function in surroundings which are not ideal for the birth, the development, of academic freedom. While the idea of being far from "madding crowds ignoble strife" is not to be recommended, as leading to the proverbial life of the frog of the well, the surroundings of the University should be such that the pupil and the master can breathe God's free air. The utmost stress in my view must be laid upon intimate contact between the teacher and the pupil : that contact is frequently missed in the busy crowded life in the cities, and is lacking in overcrowded institutions. The correspondence of the mind of the master and the pupil is the essence of University education.

University education in our country should begin after a student finishes his school career. The Intermediate examinations of Indian Universities and of Boards of Secondary Education really constitute platforms from which students branch off into different faculties. These Intermediate examinations are but transitional stage in academic life. It is not necessary for every student who reads in a school to get into a University. Unless a student is equipped mentally, morally and spiritually, he should not, as a matter of course, enter a University. Nearly forty years ago, a great educationist, Sir Asutosh Mookerjee, while delivering the first Convocation address of the newly founded University of Mysore said, "Let mental deficiency, moral obliquity, but not poverty be a bar to the acquisition of knowledge."

One could visualise in future establishment of a selfsufficient system of high school education in India. That system of education must be of a diversified type. Most of the average students in this country who

desire to earn a living through government service or through agriculture, industry, commerce or through a career in the defence forces of the Indian Union, should have efficient education of a diversified type in our schools. The ideal is rosy, the translation of the ideal into reality is indeed a baffling problem. The Mudaliar Commission appointed by the Government of India is dealing with the problem of Secondary Education in our country. We shall all await with anxious interest the publication of the report of that Commission. Our only anxiety is that commissions in this country as elsewhere are often regarded as a primordial method of shelving problems. The Sadler Commission's Report intended for the reconstruction of the University of Calcutta has, due to financial and political reasons, been long asleep on the dusty upper shelves of our secretariat buildings. The Radhakrishnan Commission's Report is yet suffering from somnolence. We shall indeed welcome its galvanisation into life.

The Secondary system of education in any country in the world is indeed the backbone of higher education. When and how our high schools will be remodelled is perhaps only known to the gods. The remodelling of Secondary education in India means the employment of qualified teachers, the proper payment of their salaries, the equipment of libraries and laboratories, and adequate provision for accommodation. The first city in India is studded with high schools without proper air and light, without playing fields, without sufficient accommodation for boys and girls, with a tutorial staff discontented in the main on account of economic reasons—without hope of the future and depressed beyond words. The libraries of most of these schools are poor. Laboratories simply do not exist. How to upgrade these high schools so as to make them at once the termini of the careers of a vast majority of the students studying in them, and at the same time to make them gateways to Universities, is a problem which will require great skill, judgment and financial support.

Regarding the problem of curricula of studies in our Universities and in our schools, it is not possible to discuss within the space available to me to discuss it at the Universities. The curricula must be of such a type that the sons and daughters of free India may not be obliged to study abroad. No one will minimise the importance and the value of foreign travels, but political economy and national self-respect, both demand that such sojourn in foreign countries for purposes of acquiring only ordinary degrees of foreign Universities should as far as possible be avoided. The curricula of studies of our high schools must be of a diversified type, and may be capable of bifurcation—one type intended for a selfsufficient high school course and another primarily designed for admission to our Universities. In any event, great importance should be attached to development of character, to eradication of physical infirmities and to acquisition of what may be characterised general knowledge and general culture.

While discussing the curricula of studies of our colleges and schools, a few observations might be made on the complex question of the attainment of the objectives by the curricula of studies. To-day the main objective of study in a school or college is the passing of an examination. The examination system, has taken out the joy of study and the delight of life from amongst our students. China, the great treasure-house of knowledge and wisdom of humanity, has made some great gifts to the world. Four of those great [illegible] have been perverted in use. The first great gift which China made to the world was the mariner's

compass. The discovery of that instrument by man made sea voyage comparatively safe. Pirate junks and dhows equipped with mariner's compass fought the typhoon and infested the coasts of China herself. The second gift which China made to the world is the gun-powder. In a sense the powder was the cause of the temporary decline of Asia and the emergence of power-politics in Europe. The third gift which China made to the world is the printing press. The printing press has indeed expanded the bounds of human knowledge, but has also been instrumental in the publicising of obscenity and blasphemy. The fourth great gift which humanity received from China is the system of examination. The Chinese mandarin was obliged to pass examinations all his life, even beyond the proverbial biblical three score years and ten. Humanity seized with avidity the mandarin system of examination. Free India has welcomed the system of examination as a test of merit and competence to public services in all spheres of State activity. The system of trial by jury, after the Napoleonic wars, came to be embodied as one of the fundamental rights of the citizen in all progressive countries of Europe and America. The system of trial by jury was not without flaws ; trial by jury suffers from human passions and human prejudices. The present Constitution of India has erased trial by jury from the list of fundamental rights of the citizen. Who in the future will modify, if not erase, the system of our examination ? For could not our Universities and Secondary Boards of Education adopt one of the recommendations of the Radhakrishnan Commission, viz. to adopt and extend the Credit System as known to many Universities and educational centres of the [illegible] The Credit System is a record of the day-to-day activity of the pupil. If the system is adopted he has not to suffer from the vagaries and accidents of examinations.

Last of all, a few observations may be made regarding the burning problem of the medium of instruction and examination in our Universities and our school-leaving examination ? The claims of the mother-tongue, the claims of regional languages, the claims of Hindi as a national language and the claims of English as a foreign tongue have been many a time weighed and re-weighed in the balance. For the tender child, the mother-tongue has been prescribed. In the case of High schools, the claims of regional languages have been admitted. For colleges and universities the choice has hovered round the national language and English. Many of our States in India are inhabited by plural societies. Very few States can claim to have only one language. There are cosmopolitan cities like Calcutta and Bombay, where schools are run for the benefit of such diverse school-going population as the Chinese, the Armenians and the Jews on the one hand, and the Tamils, the Telegus, the Punjabis, the Marwaris, the Oriyas, the Assamese and the Hindi-speaking pupils on the other. We are a secular State and we cannot afford to ignore the claims of Urdu-speaking children. What is the regional language in a plural society ? A regional language, if there is no plural society, will perhaps in future acquire the status of a national language of that State. But at present to force a regional language like, let us say, Bengali, which has a very rich literature on the non-Bengali-speaking children in schools will not only impede their intellectual development but will destroy parity in examinations and may instantly lead to a virulent kind of linguistic provincialism. A further vivisection of India on linguistic basis alone is a danger which in the interest of national unity should be avoided. Hindi in the *devnagri* script

has now been recognised as the national language of Indian Union. To make Hindi the vehicle of thought and expression for official or ordinary purposes is quite different from making Hindi compulsorily the medium of instruction and examination throughout India, particularly in the non-Hindi-speaking areas of India. Bengal's proximity to Behar, the insistence of Sanskrit as a compulsory subject of study at the school stage by the University of Calcutta for nearly a century, may perhaps make the position of Bengal easier than the case of many of the States in Southern India where the Hindi language is not cultivated and the *devnagri* script is almost unknown. According to our Constitution, English disappears from India after a period of fifteen years from its commencement. It will be difficult to impose Hindi upon all the Universities in India as the medium of instruction and examination even after the period of fifteen years. Most of the text books are written in English. They have either to be translated or text books will have to be written in the Hindi language. The result may be that all the energies of the scholars will be absorbed in the task of translation. Original thinking will then suffer. We have also to remember that for many years to come, English will be necessary for maintaining our inter-statal contact. We cannot forget the importance of English as an international language. We should therefore think over the matter very seriously, not merely from the point of view of sentiment, but from the point of view of feasibility. The story of the imposition of the Russian language on Poland or the imposition of the English language on Ireland is well known. It may be mentioned here that Canada and South Africa are both bi-lingual. The effect of the decision of Lord William Bentinck to supersede Persian by English as the court language of India upon the Persian language and literature is well known. Could it be argued that the educational backwardness of Muslims in India for many years, who were after all the rulers of India for long centuries, was due largely to the imposition of English upon them ? Could we therefore go slow ? Here raw haste will be 'half-sister to delay.'

The present system of education producing unemployment does not brighten me. It has appeared in a press note that sixteen thousand graduates in India are sitting idle. Why should they sit idle at all ? Surely we have sixteen thousand primary and secondary schools throughout the length and breadth of India, and surely these graduates could be absorbed as teachers in these schools. A University should not be regarded as a service-securing agency. The confusion of the boundaries governing the functions of the State and of the Universities might with profit to the nation be avoided. Besides, can not each graduate make a vow that he or she should be able to educate at least one pupil to his or her satisfaction ?

"Let knowledge grow from more to more ;
But more of reverence in us dwell ;
That mind and soul, according well,
May make one music as before ;
But vaster."

THE PROBLEM OF NATIONALITY IN INDO-PAKISTAN SUB-CONTINENT

By

Prof. S. A. MASUD, M.A., LL.B., *Barrister-at-Law.*

Vanity stands in the way to make an honest confession that Partition of India far from solving problems of undivided India has created much more colossal and difficult situations than it had ever been expected. The people and their accredited leaders fell victim to an well-thought diplomatic triumph, only to find themselves entangled in the tentacles of confusion and anomalies. A great country with its great people, with its natural beauties and valuable resources, is now sobbing with tears of man-made sufferings and leader-made problems. The symphony of unity in diversity is now marred by the prosaic droll of moanings and shrieks. This catastrophy found expression in the plight of refugees, recovery of abducted women, scarcity in food, slump in trade, evacuee property, passport and visa system and many other post-partition epilogues.

The determination of the question of Nationality is another phenomenon which appeared in the horizon of post-partition period as a sad legacy to the historic and glorious struggle of the brave sons and daughters of India. Patriotism is paying its penalty by de-nationalizing the Indian Nationals. Evils and sufferings have sufficiently been thrust on the people, but should we accelerate them by executive over-zealousness by way of stiffening and tightening the basic principles of the law of Nationality? This would be widening the gaping wounds bleeding with ignominy, shame, and frustration. The legislature and the executive, therefore, should not overlook the basic principles underlying the problem of determination of Nationality. Statutory intervention is inevitable and necessary but this should be taken recourse to on a juristic basis and in a statesmanlike manner.

Nationality and domicil are two different concepts, but they cannot be placed in two independent compartments in actual state of affairs, without being purely academic and without arguing in the circle. Nationality represents a man's political status by virtue of which his country of allegiance is known; whereas domicil determines his civil status so that his personal rights and obligations might be regulated. Thus a person may be a national of one country, but domiciled in another. Nationality may be acquired by birth, naturalization, redisintegration, subjugation and cession, whereas one's domicil could be proved by one's intention to make a country one's permanent home.

The determination of Nationality of the residents of India and Pakistan can best be effected if we can harmonize the following factors—(a) The special condition, history and background of the two countries (b) the modern and present trend of international thought (c) primacy of National interest, and (d) moral principles. Firstly, historically, geographically, culturally people of the two countries had all along been united by the universal relations of space and time. Indo-Pakistan Sub-continent formed one economic unit and inspite of apparent diversities, there has always

been one underlying principle of ideal or spiritual unity. Political necessity and foreign diplomacy might have separated their body but the soul of India would remain and continue to be self-same unique and immortal. Secondly, the international thought indicates that the Nationality question should be liberalized and elastic than be tightened and made rigid. Nature abhors the existence of a stateless person. In furtherance of Belfour Declaration, a Jewish Home has been found in Palestine. Article 15 of the Universal declaration of Human rights provides for the right of every individual to have a nationality. The Economic and Social Council of the United Nations Organizations in their Sitting in 1950 recommends to the member-states, involved in charges of territorial sovereignty, that they include in the arrangements of such changes provisions, if necessary, for the avoidance of statelessness, and it further invites to consider sympathetically applications for naturalization on the part of refugees and stateless persons*. Thirdly, it is preposterous to deny that the promotion of national interest should be the dominant criteria of Law of Nationality. But this by no means should become the immediate interest of a state alone, but its ultimate well-being also, lastly, moral principles and human considerations must not be eschewed in framing laws of Nationality. A Policy of generosity and idealism must be made compatible with national interest as far as it is possible. A statesman must make up his mind when faced with dilemma of moral principles on the one hand and national interest on the other; any vacillation between the two alternatives, by being, in the words of Hans J. Morgenthen "a prisoner of its own propaganda and a slave to the popular passions" will be suicidal.

In ancient India, too, the aliens have been absorbed in perfect harmony by the all-embracing generosity of its Rulers. Megasthenes bears testimony to the kind treatment that was given by Government of Chandragupta to Emigrants from foreign lands, that had migrated to the Capital city of Magadha (Ref. McCrindh's Megasthenes and Arrians). In older days, it appears that Pandava brothers were given generous treatment in the country of Virata in their period of Exile. In the modern days again, an individual may possess Double Nationality, "Knowingly or unknowingly and with or without intention". To illustrate, a child born in Great Britain of German parents acquired British as well as German Nationality. Similarly a citizen of U.S.A. marrying an Englishman acquires British nationality according to British Law, but this does not *ipso facto* take away her American Nationality. Besides, the effect of British Nationality Act, 1948 is that every person who under the Act is a citizen of U.K. and Colonies or who under any law in India or Pakistan is a citizen of India or Pakistan, shall by virtue of that citizenship have the status of a British subject. Thus, the paradox is that although there can be identity of Nationality in respect of an Indian and a Pakistani in a foreign soil and with reference to a foreign western power, identity of Nationality between two sister countries in the same sub-continent has not been achieved.

The Law of Nationality between India and Pakistan, therefore, should be simplified and liberalized. Allegiance should not be the *source* of Nationality but should continue inevitably to be the *consequence* of it, and that is obvious from the concept of temporary allegiance in modern countries.

*1950 T.U.N., p. 574. • Contemporary International relations Reading 1950-51 by Norman J. Padelford.

The most practical test to determine nationality is Lex Domicilii, and should not be left to the arbitrary discretion of the Executive, and this test would be effective if we construe "domicil" in a wide sense, as Philimore puts it as "A residence at a particular place accompanied with positive or presumptive proof of continuing it for an unlimited time" or as Kindersley V. C. in Lord v Kelvin (1859 4 Drew 366,376) defined: "that place is properly the domicil of a person in which he has voluntarily fixed the habitation of himself and his family, not for a mere special and temporary purpose but with the present intention of making it his permanent home, unless and until something (which is unexpected or the happening of which is uncertain) shall occur to induce him to adopt some other permanent home."

A learned lawyer once said:—

> *"Luck surely comes to those who look after it. It taps once a life-time at everybody's door and if industry does not open it, away it goes".*

LAW OF PUBLIC ASSEMBLAGES

By

PROF. J. MAJUMDAR; M.A., M.L.

Whatever objections may be advanced against the restrictions imposed upon the activities of the organisers of meetings and processions, it can't be denied that these have at least proved to be highly beneficial to the community by extending protection to them, which they needed so much. It is a notorious fact that persons in the neighbourhood of the highways, where the meetings and processions are held, are frequently embarrassed and inconvenienced in their making reasonable user of the highways concerned and at times they are exposed to the inevitable consequences of the outbreaks of disorder owing to the not infrequent injudicious acts of the enthusiasts. It is no doubt true that the right of free assemblage and free discussion in public are so much looked upon as the essential liberties of the people that these are most keenly contended for and jealously guarded and preserved in the Courts of law. But who can dispute that the rights to protection from the inconvenience and annoyance resulting from a too free exercise of the rights to hold meetings and processions are equally the essential liberty of the subject. The prohibition of meetings and processions on the highways will thus be as much interference with the rights of those members of the public, who choose to assemble there for the purpose as the allowing of such assemblages to the extent of causing obstruction of the streets and disturbances of the peace will be interference with the rights of the other members of the public to the user of the highways and to personal freedom from danger and annoyance. If then it would be inexpedient for the State to curtail or otherwise affect the rights of public assemblages, it would be for it to abdicate its function to allow such rights to be converted into a licence to cause obstruction of the highways and to break the peace. The proper course of the Government in the circumstances would thus be to take up an attitude, which while allowing the right of free associations in public for the purpose of meetings and processions would nevertheless concede to it the authority to prevent obstructions and breaches of the peace being caused on the highways and in the neighbourhood. The measures which have been taken, although they may not be an ideal solution of the problem before it, have at least this merit in themselves that without denying the essential liberty of public meetings and public processions, these are concerned to restrict the mode of its exercise in public places. The right to hold meetings and processions, it must be remembered, is to be distinguished from the right to choose the time and place, where and when that right is to be exercised. Whatever may be the extent of the restrictions, they are confined only to the choice of time and place for holding such meetings and processions. The rights of free assemblages in public for the purposes are all there, at least they have not been definitely taken away, or even affected by these restrictions. Indeed, as a matter of fact, organised meetings and processions are in daily practice permitted to take place in or near a highway without being interrupted or dispersed by the police. All that has been done is that the authorities

have now the power to give such directions to the organisers of processions and meetings as they may think proper for the preservation of public order, such as, for example, prescribing the route and prohibiting entry to any public place specified in the directions, and if need be, ordering general prohibition of all meetings and processions in defined areas for a space of time and even preventing them in advance either directly or indirectly by binding over the organisers to keep the peace or alternatively to be of good behaviour. All these are intended to regulate the time and place of such meetings and processions, and not to affect the right of holding them. These prohibitory provisions, themselves beneficial to the outsiders, no doubt indirectly affect the organisers of meetings and processions by denying them at times the use of the highways for their specific purpose. One may therefore pause to enquire whether something could not be done by way of relieving this hardship by affording a reasonable measure of facilities for the free use of the various public buildings to all public organisations. This would at least satisfy the conveners of meetings by enabling them to hold the same there instead of on public streets and would indirectly help the cause of maintenance of order by curbing and checking the desire for marches by impecunious demonstrators, which so often provoke disorders and seldom achieve their purpose in consequence thereof. But that as it may, it is not for a lawyer as such to embark upon a discussion of a matter, which does not strictly belong to the domain of law but properly to the sphere of politics.

From the point of view of a constitutional lawyer, these prohibitory provisions of the law, though these have been beneficial in practice, are, however, open to criticism on very grave and fundamental grounds. Leaving aside such technical distinctions as are involved in differentiating rights to hold meetings and processions from the modes of their exercise and looking at the substance, it can't be disputed that the effect of the existing law has been materially to encroach upon individual rights of free movement and free speech. The only justification for such interference is, as pointed out by Dicey, the absolute necessity for preserving the King's peace. Granting it to be so, would it be, on that ground, justifiable to prevent or to disperse meetings and processions, which are lawful in themselves, merely because it would be difficult to render the participants adequate protection against intending law breakers ? For a Government to do so would be virtually to say that the authorities are not prepared to prevent the infraction of the law and to restrain those who intend to disobey the law from interfering with the lawful rights of law-abiding citizens. Such an inaction on the part of any Government is practically an abdication of all authority, a surrender of all governmental function to maintain peace and order, which is certainly the most important if not necessarily, the only purpose for which it exists. In the words of that eminent Irish judge, Fitzgerald, J., in *Humphries* vs. *Connor*, the State "in so doing has been making not the law of the land, but the the wrongdoers or to bind them over to keep law of the mob supreme". Such interference with the lawful rights of the subjects, if carried to the full extent of the principle, will, undoubtedly be accompanied by grave constitutional danger. The proper course for the Government is, in such cases, to arrest the wrongdoers or to bind them over to keep the peace or to introduce sufficient force to compel the law-breakers to withdraw or to desist from doing so. The presence of a sufficient police force will no doubt act as a powerful deterrent to high-handed actions of would-be wrongdoers and will normally reduce the prospects of such infractions of

law and of public peace. As has been observed by Chief justice O'brien in '*R* vs. *Justices* of *Londonderry*' "what would become of personal liberty if the innocent action of a person could render him liable to restraint at all because it gives groundless offence to others". "If danger arises" so says his lordship "from the exercise of lawful rights resulting in a breach of the peace, the remedy is the presence of sufficient force to prevent that result, not the legal condemnation of those who exercise those rights". The remedy prescribed as above may not be absolutely free from criticism in as much as in the opinions of many people, the posting of policemen at the meeting or with the procession is objectionable as tending rather to restrict than to preserve freedom of activities of those taking part in these congregations; but no one can dispute that such a course for the Government to follow would be much more desirable and at the same time much more reasonable than the adoption of a policy of total banning of all such assemblages, however temporary and localised it may be, on the ground of the inability on the part of the authorities to protect the individuals concerned against the attacks of mischief-mongers.

"That system of law is the best, which leaves least to the discretion of the judge—that judge is the best, who relies least on his own opinion".

—(4 Inst. 41, cited by Tindal, C.J.)

EVOLUTION OF LAW

By

SRI MANI CHAKRAVARTY, M.A., LL.B.—(*An ex-student*)

The genesis of law is traced in the uniformities operating in the elemental Nature. Evolution of the world from chaos to cosmos, regularities working in the physical phenomena led the primitive man to perceive an undercurrent of order or uniformities in Nature which he was apt to call law. Pythagorian law of harmony is an instance in point. Thus in the order of Nature that the sun rises in the east and sets in the west, where there is birth there is death, etc., man found his law in its crudest rudimentary form. Thus law of Nature formed the infancy of law. Human life in the dark age was hardly distinguished from the beastial life. He used to live in caves and crevices, pluck fruits from trees, hunt animals and eat them. Human life was then merely instinctive and satisfaction of appetite or lust constituted the chief needs thereof. Reprisal for wrong was the law of that age, e.g. "Eye for an eye, tooth for a tooth".* Might was right ; force was met by force. His first law was to provide for his own preservation. But widespread catastrophies such as deluge, famine, epidemics came and men were led to conceive of some paramount power working behind these disasters. They called this omnipotent being 'God', the maker, the preserver and the destroyer of the living world. Thus religion came into being. Henceforth man found his law in his religion. Thus we find the origin of Hindu law in the pronouncements of God as recorded in the Vedas, the origin of Mahomedan law in the Koran, and that of English law in the ten commandments of God and the Bible. For centuries together religion stood for law. Then with the growing complexities of human life, man saw the difference between religion and law. Even then men identified law with the rules of morality. The stoical school contributed much to this conception. Thus in the middle age we come across the bewildering confusion between law and morality. The Romans confused law with *Jus gentium*. Thus law was gradually becoming more and more unpractical and this was more so due to the fine-spun cobwebs of disquisitions of the metaphysical school of the 18th century. It is only at the latter part of the 18th century that man thought of civil law as distinguished from moral one. Law was hitherto occupying a high pedestal. But in France, Rousseau brought it from the Forum to the street and it became the gospel of revolution. When revolution subsided, monarchy was resurrected and law which hitherto assumed multiple forms and shapes was centralised. Here lies the origin of the doctrine of the divine right of kingship. Law in the 19th century and onwards has become positive. The word 'positive' has come from the latin term '*positum*' which means expressly established by the supreme sovereign authority in the State, i.e., positive law hinges on sheer physical force and coercion exercised by the State. The foregoing history shows that the fetters of law are being more and more tightened due to increasing feuds and disputes. Modern law is getting

*Mosaic law.

mechanised. Every nation is striving hard to grab more and more power through warfares. Actually speaking, battles and warfares characterise the 20th century and this is why the formation of the League of Nations or of U.N.O. has proved utter failure. There will be other wars, more extensive and protracted. Science will lure men to invent and innovate more and more ingenious and destructive arms and weapons of warfare. Hundreds and thousands of human beings will kill each other. Formidable injuries and hideous infractions will multiply. Much blood will be spilled. Inhuman atrocities will work in the four corners of the globe. Political indulgence will be extended to an unreasonable limit followed by heavy drainage of national resources for the continuance of warfares. Culture and refinement will be at standstill. Fury, thrill and horror will have their easy and triumphant march over the face of the globe littered with the corpses of fighters. Civil population as well as civil liberties will be at the mercy of the war-mongers. It will be the unquestionable regime of *the law of the jungle* or the reign of terror in the so-called civilized societies. But wars cannot institute peace. Success of the stronger side means the forcible subordination of the weaker one which smarts all the while under the wound of defeat and strives to consolidate power for proper retaliation. Wars, therefore, beget wars and not peace. Men will therefore surely grow tired of the feuds, skirmishes, battles and warfares in the long run. Physical force cannot remain the be-all and end-all of Law for all the time to come. Law must take a sober and rational turn when quarrelling individuals and belligerent states will realise "peace hath her victories no less than war." This is more suggestive because the positive element or the statutory law is not the only component ingredient element of modern law. It consists of customs and judicial decisions also—modern law is not a bunch of substantive rules only but is procedural also and from this we can infer that there will be other possibilities of Law in future. A day will come and that is not too far off when people will abhor warfares and avoid them. They will form one-world state founded on mutual understanding, co-operation, cultural regeneration and universal brotherhood. Then will ensue the rationalisation of Law. Law will purely be for the people and not the people for Law. There will be the universal fraternity for territorial sovereignty. Individuals will be philanthropic, and not patriotic, in their outlook. Man will perceive that love of his own kind is sublimer than that of God and that cosmopolitanism transcends piety and religion. Human race will be knit together and cemented by an inviolable tie of unreserved amity and unalloyed conciliation. Nationalism will quit this mundane globe and make room for internationalism. International law will no longer worry the students of law as the vanishing point of jurisprudence. The renaissance of Law will dawn. Paradise lost by man through folly will be regained through wisdom.

THREE U. S. SUPREME COURT DECISIONS

(Re: Religious Freedom clause of the First Amendment)

By

SRI DEVAPRASAD CHAUDHURI. (*An ex-editor*).

In the Constitution of India the provisions relating to Right to Religious Freedom are contained in Articles 25, 26, 27 and 28. These Articles come under Part III, which deals with the Fundamental Rights of the Citizens of India. So far, our Supreme Court has not been called upon to deal with these Articles. But, undoubtedly sooner or later these will have to be considered.

The Constitution of the United States of America provides in its First Amendment that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof". A few important decisions have been woven round this provision by the Supreme Court of the United States. In this article three of the most recent and most significant decisions are considered.

The history of the enactment of Articles 25-28, of our Constitution is very different from the history of the enactment of the Religious Freedom clause of the First Amendment. But, there can be no doubt, that in days to come, our Supreme Court will have to consider the reasonings applied in these decisions before coming to any conclusive interpretation of Articles 25-28.

I. Everson *v* Board of Education. (91 L.Ed. 711). (Decided 1946).

A New Jersey statute authorised its local school districts to make rules and contracts for the transportation of children to and from schools. The appellant, a township Board of Education acting pursuant to this statute, authorised reimbursement to parents of money expended by them for the bus transportation of their children on regular buses operated by the public transportation system. Part of this payment was for the payment of transportation of some children in the community to Catholic parochial schools. These Church schools gave their students in addition to secular education, regular religious instruction conforming to the religious tenets and mode of worship of the Catholic faith.

The appellant, in his capacity as a district tax-payer filed this suit challenging the right of the Board to reimburse parents of parochial school students.

One of the grounds taken up by the appellant was that the statute forced inhabitants to pay taxes (or to put it mildly: the taxes they had to pay were being spent) to help, support and maintain schools which were dedicated to and which regularly taught the Catholic faith. This was alleged to be a use of state power to support Church schools contrary to the prohibition of the First Amendment which the Fourteenth Amendment made applicable to the state.

The Supreme Court of the United States upheld the statute by a close majority stating that the money reimbursed to parents of parochial school students did not taint the statute as a law "respecting an establishment of religion," its purpose merely being to provide in the interest of public welfare for the safe transportation of

school children irrespective of their religious faith. The principle of this decision seems to be that the purpose of the statute being "safe transportation of school children" it is not unconstitutional if it incidentally helps parochial schools.

The dissenting judges who would declare the statute unconstitutional said : "In view of this history (i.e. history of the enactment of the First Amendment) no further proof is needed to show that the Amendment forbids any appropriation, large or small from public funds to aid or support any or all religious exercises. * * * Legislatures are free to make, and courts to sustain, appropriations only when it can be found that in fact they do not aid, promote, encourage or sustain religious teaching or observances, be the amount large or small."

It is interesting to note that the majority upholding the statute were also of the opinion that the First Amendment intended a wall to be erected between Church and State. They observed: "Neither a State nor the Federal Government can set up a Church. Neither can pass laws which aid one religion, aid all religions or prefer one religion over another. Neither can force nor influence a person to go to or remain away from Church against his will or force him to profess a belief * * *. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practise religion * * *. In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.' It may be observed here that in the next case we deal with, a State Statute was declared unconstitutional on the principles of the observations mentioned above.

II. McCollum *v* Board of Education. (92 L:Ed. 648) (Decided 1948)

The appellant, Vashti McCollum, began this action for Mandamus against the Champaign Board of Education. Her asserted interest was that of a resident and taxpayer of Champaign and of a parent whose child was then enrolled in the Champaign public schools. Illinois has a compulsory education law which, with exceptions, requires parents to send their children, aged seven to sixteen, to its tax-supported public schools where the children are to remain in attendance during the hours when the schools are regularly in session. Parents who violate this law commit a misdemeanour punishable by fine unless the children attend private or parochial schools which meet educational standards fixed by the State.

In 1940 interested members of some religious groups formed a voluntary association called the Champaign Council of Religious Education to offer classes in religious instruction to public school pupils in grades four to nine inclusive. Classes were made up of pupils whose parents signed printed cards requesting that their children be permitted to attend ; they were held weekly, thirty minutes for the lower grades and forty-five minutes for the higher. The Council employed the religious teachers at no expense to the school authorities. Classes were conducted in the regular class rooms of the school building.

The Court held that the foregoing facts, showed the use of tax-supported property for religious instruction and the close cooperation between the school authorities and the religious Council in promoting religious education. It was observed "The operation of the State's compulsory education system thus assists and is integrated with the program of religious instruction carried on by separate religious sects." And this according to the Court fell squarely under the

ban of the First Amendment (made applicable to the states by the Fourteenth).

The Court further commented that, here, not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines, the state also affords sectarian groups and invaluable aid, in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. "This is not separation of Church from State", the Court observed. We now pass on to the last case in the series we are discussing.

III. Zorach *v* Clauson Jr. (96 L.Ed. Advance Opinions 609) (Decided 1952)

New York City has a program which permits its public schools to release students during the school day so that they may leave the school buildings and school grounds and go to religious centers for religious instruction or devotional exercises. A student is released on written request of his parents. Those not released stay in the class-rooms. The Churches make weekly reports to the schools, sending a list of children who have been released from public school but who have not reported for religious instruction.

Appellants who are tax-payers and residents of New York City and whose children attend its public schools, challenged the present law, contending it is in essence not different from the one involved in the McCollum case.

In an opinion by Douglas J., six members of the Supreme Court upheld the validity of the program. The ground given for sustaining the program may be stated as follows :

First, There is no evidence that any coercion is used to get public school students into religious classes.

Secondly, The First Amendment does not require that in every and all respects there shall be a separation of Church from State.

Thirdly, The public schools did not allow religious classes within the school buildings as in the McCollum case.

A bit of closer examination will, however, show that the second ground contains the principle on which the decision is based and it shows that the majority of the Supreme Court no longer recognises 'a wall of separation between Church and State'. Surprisingly enough, the majority stated that they were still following the McCollum case, but only, not extending it further. It is however, difficult to understand why the majority did not frankly admit that they had changed their minds since the McCollum case, without trying to distinguish it from the present case.

Mr. Justice Jackson's dissenting judgment is revealing ; "This released time program is founded upon a use of the State's power of coercion, which, for me, determines its unconstitutionality. Stripped to its essentials, the plan has two stages, first, that the State compels each student to yield a large part of his time for public secular education and, second, that some of it be 'released' to him on condition that he devotes it to sectarian religious purposes. * * * The greater effectiveness of this system over voluntary attendance after school hours is due to the truant officer who, if the youngster fails to go to the Church school, dogs him back to the school room. * * * It takes more subtlety of mind than I possess to deny that this is governmental constraint in support of religion. It is unconstitutional, in my view, when exerted by indirection as when exercised forthrightly.

The day that this country ceases to be free for irreligion it will cease to be free for religion—except for the sect that can win political power. The same epithetical

jurisprudence used by the Court to-day to beat down those who oppose pressuring children into some religion can devise as good epithets tomorrow against those who object to pressuring them into a favoured religion. * * * A number of justices, just short of a majority of the majority that promulgates to-day's passionate dialectics, joined in answering them in McCollum *v* Board of Education. The distinction attempted between that case and this is trivial, almost to the point of cynicism, magnifying its non-essential details and disparaging compulsion which was the underlying reason for invalidity. A reading of the Court's opinion in that case along with its opinion in this case will show such difference of overtones as to make clear that the McCollum case has passed like a storm in a tea-cup. The wall which the Court was professing to erect between Church and State has become even more warped and twisted than I expected. To-day's judgment will be more interesting to students of psychology and of the judicial processes than to students of constitutional law."

"Reason is the soul of the law, and when the reason of any particular law ceases, so does the law itself".

—(*Co. Litt. 70 b.*)

HINDU WOMEN AND PROPERTY LAW

By

SRI NOPCHAND SHARMA. (*An ex-student*)

In Kalidasa's famous dramatic masterpiece 'Shakuntala', there is a passage in which King Dushyanta throws light on the hardship caused by the application of the law of escheat to the property of a wealthy merchant who had died without heirs. This may be taken as illustrating the disabilities which the women had to face regarding inheritance to property and this theory was rigidly supported by the texts of Manu and other "Smriti-writers". Until the age of commentators, when the more intrepid among them, like Vijnaneswara, were enthusiastically in favour of women, it is presumed that the general practice was to disinherit women. But this practice should be viewed against the equally ancient recognition of private property for women in the form of 'Stridhana', which first occurs in the 'Dharmasuttra' of Gautama. According to Sir Henry Maine, this right of women to hold separate property was a 'remarkable fact', because it had developed among the Hindus, "at a period relatively much earlier than among the Romans".

The later commentators tried to solve this contradiction and even Kulluka who had gained reputation for narrowness of his views, was not hesitant to point out that Manu had himself enumerated six kinds of Stridhana. Inheritance to the property of men was confined to men while women's property was allowed to be inherited by women. But neither of them could have been completely excluded from inheritance to the other's property at some stage. A solution however was found out with the advent of the champions of women's right to property among the later authorities. It was Narada (about A.D. 300), who had declared that the dependence of women was not incompatible with their acceptance of property. Vijnaneswara's views had been very liberal regarding the inheritance right of women to property. It were his views which were followed by the British Indian Courts very consistently.

The most important step regarding the right of women to property was the enactment of the Hindu Women's Right to Property Act in 1937 which included a widow, a son's widow and a grand-son's widow among the simultaneous heirs.

This piece of legislation has no doubt been a great achievement, since it has affirmed for the first time the right of women to inherit along with male heirs. Till the passing of this Act, the women had only the right to succeed on the failure of male heirs and some preferences were also accorded in the order of succession by which women nearer to a deceased owner were given rights over the more distant male heirs. The Act has also not varied the principle that the estate is limited to a woman's widowhood and would lapse on her remarriage. It has had a limited application since it does not yet affect succession to agricultural property nor does it entitle female heirs in the capacity of sisters or daughters to enjoy any right along with male heirs.

This will suffice to clarify the extant ignorance on the real nature of the traditional rights enjoyed by Hindu women in the matter of inheritance to property.

Excepting a period of uncertainty lasting during the first five centuries of the Christian era, the effect of interpretation has been to provide inheritance rights to women, always subject to the preference of, and the absence of, male heirs. There were certain conditions which governed the succession to women's Stridhana property and this succession being in order of proximity has varied in different places and at different times. One such condition was the chastity of the widow and under the Dayabhaga School of Hindu Law, succession to daughters depended on their capacity to raise male heirs. But, though the order may differ according to whether it was the test of religious efficacy governing the Dayabhaga School of Bengal or that of propinquity governing the Mitakshara prevalent elsewhere in India, women as such were seldom excluded from the right of inheritance. The main limiting factor has however been the restricted powers of disposal of such estates which resulted in a new concept of a woman's estate. But within these limits the women had an absolute power of enjoyment.

The next important step was taken by the introduction of the Hindu Code that was initiated by Dr. B. R. Ambedkar in the Indian Parliament to codify the Hindu Law. Under this Bill, many important provisions were included in connection with the inheritance rights of women in order to remove the aforesaid limitations. It was provided to give an absolute estate to women in all cases in which they hitherto had a limited estate. It was also provided that the daughters would get either equal to or at half of the son's share in the property left by the father whether agricultural or otherwise. This has evoked the severest opposition and undoubtedly, it is pregnant with some practical defects. The share in the agricultural property to daughters will cause more and more fragmentation of land which is already on the highest point in the Indian land system. The devolution of immovable property to a family in two different places, while the family lives in a third, would further aggravate absenteeism or at least make the property less useful. There is also the question of principle that while Mitakshara is being more or less substituted by Dayabhaga, the principle of religious efficacy which is the entire basis of the latter, will also be rendered nugatory, introducing compulsory secularism in the sphere of personal law. But exceptions should be made in the case of unmarried daughters so long as they remain unmarried.

It is quite true that the social status accorded to women has all along been quite unrelated to what ever legal disabilities they have suffered in the course of history. Many of the limitations were justified on pragmatic considerations, such as—the differences created by the seclusion of women and their incapacity to act fully to safeguard their interests, a drawback which is still felt by a large majority of women. It is probable that so long as the joint family instincts are still strong and there is a desire to hold property in common, the daughter's share wherever it leads to partition or to the influence of a stranger son-in-law in the family, will in either case be regarded as undesirable.

THE INCOME TAX LAW—AN ANALYSIS

By

SRI MADANLAL JHUNJHUNWALA, M.A., B.Com.
(*Third Year Class*).

The principles of Income Tax Law are fairly simple. The problem lies in their true application to proper cases. Similarly the word 'income' looks fairly innocent, but it becomes a problem when asked to construe it judicially. Ordinarily or etymologically the word 'income' means that 'what comes in', but within the meaning of and for the purpose of the Indian Income Tax Act, this straight analogy of the word 'income' is not accepted. In the Act, the word has not been defined but under Sec. 6 of the Act, various sources of Income have been described on which an assessment is made. In the leading case of 'Commissioner of Income Tax, Bengal v. Shaw Wallace & Co.'* their Lordships of the Privy Council have remarked that the word 'income' in the Indian Income Tax Act connotes a periodical monetary return, coming in with some regularity or expected regularity from a definite source which need not be one which is expected to be completely productive but which must be one whose object is the production of a definite return, excluding anything in the nature of a mere windfall. But this decision of the Privy Council has been superceded by the same tribunal by various subsequent interpretations. In the Supreme Court of India in a very recent case of 'Raghubanshi Mills Ltd., v. Commissioner of Income Tax, Bombay,[1] Mr. Justice Bose has remarked that 'it is true that the Judicial Committee attempted a narrow definition in Commissioner of Income Tax v. Shaw Wallace and Co., by limiting income to "a periodical monetary return, bringing in with some sort of regularity or expected regularity from definite sources, but in our opinion, these remarks must be read with reference to the *particular* facts of that case." It seems that the safest principle before the Income Tax authorities is that anything which can be described as 'income' is taxable unless expressly exempted. The horizons of income are thus endless and ever-expanding.

As to the construction of a taxing Act in case of a dispute, the onus lies on the Revenue authorities to show that a case is within the mischief of the Act and it is not for the taxpayer to show that it is outside its orbit (Lord Advocate v. Hamilton's Trustees).[2] In case of taxation laws, the taxpayer has the right to insist on a very strict construction of the words used in the Act. He simply refers to the Act itself to see whether the tax claimed is what the legislature has enacted. There is no presumption in a taxing Act (Cape Brady Syndicate v. Inland Revenue Commissioners)[3]. The best and the safest guide to the intentions and ideas of the framers of the taxing legislation is afforded by what the legislation speaks of itself. When an Income Tax tribunal or a competent court applies a particular Act with the belief that the legislature would not be presumed to have enacted a glaring injustice, it can not

* 5 I.T.C. 211 & C.W.N. XXXVI 653.
[1] AIR 1953 S.C. 4(6).
[2] 1942 S.C. 426 & 446.
[3] 1921. 1 K.B. 64.

consider what is fair and what is oppressive in taxation. If the person sought to be taxed comes within the letter of the law, he must be taxed whatever difficulties and hurdles the court is to encounter. Hard facts do not make bad laws.

Income Tax is a tax on income and not on anything else. But the legislation has taken long strides and has extended its original limit of taxable income to other regions not contemplated originally. The inclusion in its fold of certain types and catagories of income is opposed to the basic principles of taxation laws. Under the Capital Gains Tax Act, 1947, capital gains were taxed in contrary to the fundamental principle of the taxation law. This Act was, however, not extended beyond 31st March 1948, but, it still remains as a part of the main Income Tax Act, 1922 under Sec. 12B as a retrospective measure.

Income is ordinarily taxed on the income of the year in which it accrues or is received, and it is generally paid by the assessee in the next succeeding year on the basis of the return submitted. But this provision of law is subject to other provisions in the Act which are contrary to the basic principles and spirit of the law. We find, sometimes, tax is deducted at source under Sec. 18 of the Indian Income Tax Act even before the income accrues to the assessee. Under Sec. 24A an assessee is taxed if he contemplates leaving the taxable territories of India. In case of discontinuance of business provision for assessment has been made under Sec. 25(1) in advance. In 1949, the central legislation was amended and another section, 23B was added in the main Act whereby the Income Tax officers have been empowered to make provisional assessment in advance of the regular assessment and thus Sec. 18A provides for the advance payment of tax and the Income Tax officers have also been given powers to tax income even before it reaches the hands of the assessee. Above all, under Sec. 4(1), clause (b) (iii) remittance of foreign income is taxed in the year in which it is brought to the taxable territories of India. This will result in all probability in the withdrawl of foreign capital of which we are in urgent necessity under the Five-Year Plan. Thus we hope legislative reform is needed.

Another serious defect lies in the Act that no appeal lies against the Appellate Assistant Commissioner's refusal to condone the delay in a particular case in which the filing of an appeal is delayed. There is always a possibility that an error of judgment may be made by the Appellate Assistant Commissioner. The High-Courts are helpless in this regard even if the assessee's case is a bonafide one and the delay may be reasonably justified. Thus, we see equity has very little role to play under the Income Tax Act for which again, proper legislative reform is needed.

Nodoubt, one is necessarily inclined to apply the case law to supplement his knowledge of the Income Tax law. But all amendments to the Act, fresh ordinances and notifications as and when issued by the authorities, and the growing diversities of contingencies under which cases are decided, make a lawyer much perplexed and thus, he always legs behind in his knowledge of the law. The Indian Income Tax Amendment Bill, 1951 which aimed at completely overhauling the Act lapsed due to the dissolution of the Indian Parliament in 1951. A new Bill 'The Indian income Tax (Amendment) Bill, 1952' is pending before the Parliament and very soon, it will get the sanctity of law. It is hoped, it will provide far-reaching changes in the Income Tax Law. This kind of tinkering with law will bring, the assesses and the lawyers hardships and difficulties of a varied nature. It is admitted that law is an experiment as it is true in the case of life. But the experiment should not be so frequent and

transitory so as to rob the law of its all important character, namely, stability. Lord Sumner has rightly remarked, "The way of taxpayer is hard and the Legislature does not go out of its way to make it any easier."

A new law ought to be prospective, not retrospective, in its operations. —(2 *Inst.* 292.)

PROFESSOR BOREDOM ON TRIAL

By

SRI SEPHALI SINHA (*Third Year Class*).

Persons Appearing

Mr. Justice Grissly
Mr. Scarecrow—Prosecuting Counsel
Mr. Bashful—Defence Counsel
Mr. Pushing, Miss. Restless, Mr. Artful } Prosecution Witnesses Nos. 1, 2, 3.
Mr. Gas, Mr. Crackpot, Mr. Watchful } Defence Witnesses Nos. 1, 2, 3.

(All the witnesses are students of the University Law College, Timbuctoo, excepting Professor Keen Watchful who happens to be the Head of the institution).

The Accused—Professor Busibody Boredom, B.F., J.A., A.B.C.

The Jury (Consisting of nine persons including the foreman).

A Clerk of the State

Charge—U/s. 19 of the Human penal code, Professor Boredom is charged with maiming mutiliating and murdering the youthful enthusiasm and vigour of the students. U/s. 11 of the International Code of Humanity the prisoner is charged with deliberately inflicting suffering on young persons of college-going age. The charge is read over.

Judge—Do you plead guilty or not guilty?

Accused—Not guilty.

Mr. Scarecrow proves Prosecution Case formally through P.W. 1, P.W. 2, P.W. 3,

Defence Counsel begins

Defence Witness No. 1 (Mr. Gas).

Defence Counsel : What is your name ?

Witness : Ass . . . eh . . eh . . I . . I . . mean Gas.

D.C. : Are you a student of the accused ?

W : I am privileged to be Professor Boredom's student.

D.C. : Do you follow his lectures ?

W. : Every word of it.

D.C. : Do you find them interesting ?

W. : Of course.

D.C. : What are the points of interest in his lectures ?

W. : His lectures are sane, intelligent and glamorous . . I . . I . . mean humorous. They are the very quintessence of . . of . . wise cracks . . no . . no . . wisdom. From Constitutional Law to Cabbages, from Equity to Potatoes, from Prescriptions to Poultry Farming, there is no subject that he adorns and touches, I mean, touches that adorns. I mean . . . oh, you should know what I mean. Or shall I start from the beginning ?

D.C. : (Hastily) I understand what you mean. You may proceed.

W. : He always comes to the class proceeded by the peon with a cart load of reference books (stops suddenly, then) what's the matter ? Why is everyone staring at me? I did'nt put the cart before the donkey did I ? I . . mean. . . .

D.C.: Don't get nervous. You have put the cart after. I mean. . . oh, never mind, carry on.

W. : His notes are culled from authoritative sources, and he quotes books by chapters and sometimes by paragraphs, and we often wonder which are his notes and which the text books. He has got all the facts at the tip of his nose. . . I mean . . . his fingers. His lectures are sane, intelligent and . . and . . . glame . . humorous.

They are the very quintessence of wise . . wisdom. From Constitutional Cabbages to Political Potatoes . . . I mean . . Constitutional Potatoes to Poultry Prescriptions . . I mean. I . . mean . . I'll start over again . . I . .

D.C. : That is all right Mr. Gas, you have already told us. So there is no complaint against the lectures of the Professor.

W. : Certainly not. They are sane, intelligent and humerous. They are the quintess . . . .

Cross Examination by the Prosecution Counsel :

P.C.: We have already heard that Mr. Gas. Where did you learn it from ?

W. : From the Defence Counsel of course . . . I . . mean. What do you mean anyway ? You can't make me look a fool in public like this. I have half a mind to-to . . . . .

P.C. : (Sarcastically) Sorry to make you look a fool in public. I did not know it was a secret. As for your having half a mind. Well, we don't deal with half wits. There are places you know. . . .

Defence Witness No. 2 (Mr. Crackpot).

D.C. : What is your name ?

W. : Crackpot.

D.C. : In what class are you studying ?

W. : Third Year.

D.C. : Does the accused take any class for you ?

W. : Oh, yes. Three hours a week.

D.C. : How do you find his lectures ?

W. : Brilliant. They are witty, amusing and very learned. In fact, Professor Boredom is one of the best professors I have studied under. What Oxford accents! What Cambridge intonation ! What Webster Grammar ! I mean his grammar . . .

D.C. : Please Mr. Crackpot we want to know about his lectures, not his grammar. Is it ever .tedious or boring ?

W. : Never. Why, we were proceeding famously. It is so interesting that you almost forgot you are listening to it.

D.C. : Do you know the accused personally ?

W. : I have the honour to be an accepted friend of his family. And I tell you that the Professor is one of the kindest of men. I must say that I admire him immensely. And he gives me very good marks.

D.C. : So you think all these accusations against the Professor are baseless ?

W. : What doubt is there ? Why, it is shocking that a man of Professor Boredom's ability should be hauled up in Court like a felon.

Cross Examination

P.C. : Is it not a fact Mr. Crackpot that you have sent the accused presents a number of times ?

W. : Well . . you see . . what . . . . not in the past . . I . . . .

P.C. : I am not asking about the past or the future. I am asking you about the present . . . presents. Answer the question, yes or no ?

W. : (hesitantly) yes.

P.C.: And why, may I ask?

W. : It's none of your business. I send what I like to whom I please. .

P.C. : Remember Mr. Crackpot that you are in the witness box on oath. You have to answer all the questions put to you. Why do you send presents frequently to Professor Boredom ?

W. : Because I know his family very well . . . and they were only as presents to his pretty daught . . eh . . eh . . I . . his little children.

P.C. : And to get marks, eh ? You may step down.

Defence Witness No. 3 (Professor Watchful) :

D.C. : What is your name ? What are you ?

W. : I am Keen Watchful, the Head of the Department of Law, University of Timbuctoo.

D.C. : So the accused is directly under you ?

W. : Yes.

D.C. : Have you any complaints against Professor Boredom's work as a lecturer.

W. : Not in the least. Professor Boredom is the most unassuming lecturer. He never gives me the least trouble. He never absents himself. He never wants any special favour like changing his hours of work. In short, he never pesters me with little things like these silly lecturers. And he produces very good results. All his students pass and a few get distinctions. What more can I want?

D.C. : Thank you, Professor Watchful. Your evidence is most valuable.

Cross Examination :

P.C. : Is the accused popular among students ?

W. : I presume so, since no student has ever complained to me against him. Besides it is not an important matter. His results are good and that is what matters.

P.C. : Don't you think that the good results are inspite of Professor Boredom ?

W. : I don't think so. Opinions differ, I suppose.

Defence Counsel :

(The Defence Counsel chiefly deals with self-contradictions and gross exaggerations of the Prosecution Witnesses and shows how unreliable they are. He also puts in a strong plea for the cause of education and learning of which Professor Boredom is an embodiment.)

Prosecuting Counsel :

(The Prosecuting Counsel briefly relates his case against Professor Boredom. He brings out all the important points in his evidence—how his lectures send students to sleep or make them absent themselves, how he makes the most interesting subjects dull so that, where he ought to be eagerly listened to he is cursed as a pest, his tiresome digression and anecdotage, his tedious method of diction and the serious results of negligence of his duties . . . etc. The Counsel meets some of the evidence of Defence Witnesses and shows how unreliable the words of Gas and Crackpot are).

(Jury retires for a short while and then returns).

Clerk of the state to the Jury—Have you reached a verdit ?

Foreman : Yes.

Clerk : Are you divided in your decision?

Jury : No, we are unanimous.

Clerk : Guilty or not guilty ?

Foreman : Not guilty.

Judge : Prisoner in the dock, the jury has found you not guilty. I therefore . . .

(By this time, slow and measured steps are heard approaching. The Clerk jumps up scared, and shouts hoarsely "Ghost of Sephali Saint". On to the stage there walks a ghostly figure in white. Pointing to the prisoner and half turning to the judge, it says in solemn, sepulchral tone :—

"I accuse this man of having bored me to death. My spirit shall find no rest, it shall wander for ever in the wilderness of the spirit world, troubling all persons in the Court until I am given satisfaction. I was so bored by the man's lectures that I died of boredom. Unless he is punished, my spirit finds no rest and I shall haunt the walking hours and the sleeping dreams of all those present here unless I am revanged).

Ghost—Exaunt :

Judge : It looks as if divine providence has itself intervened to punish you, Professor! So I have no choice, but to obey

the divine commandment and punish you. The Jurys' verdict is, under the circumstances, null and void.

I hereby sentence the accused Professor Busibody Boredom. Your sentence, two hours everyday for two years the prisoner shall stand before a full length mirror and talk to his own image in order that he may himself experience the boredom he causes to other people.

It is the office of the judge to instruct the jury in points of law—of the jury to decide on matters of fact.

—(*8 Rep. 155.*)

A PLEA FOR A UNIFORM CIVIL LAW
ON
MARRIAGE AND DIVORCE

By

SRI SATYENDRANATH KOLEY, (*Third Year Class*).

A proposal for codifying the law regarding marriage amongst the Hindus is afoot in the Parliament. Legislators are going to discuss the proposed Hindu Marriage and Divorce Bill. In this context some people have raised the question of feasibility of a uniform civil code applicable to all citizens irrespective of religion. It would not, therefore, be out of place to deal with the institution of marriage as obtaining among the Hindus and Mahomedans and to point out the anomalies existing therein.

A very casual knowledge on this subject will show that women, generally speaking, stand at a much lower level of the social ladder as compared to their opposite sex. They are not equal to men in this respect.

In Republican India each and every person is deemed to possess equal status before law. Article 14 of the Constitution clearly states : "The state shall not deny to any person equality before law . . . . ." Further, it has been provided in Article 15 that "the state shall not discriminate against any citizen on grounds only of religion, race, caste, *sex*, place of birth or any of them."

Judged by the above two Articles of the Constitution in the light of the rights of women we find that the *actual* position is far from being in conformity to the fundamental rights as guaranteed by the Constitution itself. Although the Constitution purports to guarantee the rights of men and women on equal footing (as it prohibits discrimination on the ground of *sex*), the women in Indian in reality do not enjoy rights equal to those enjoyed by men. They, in fact, suffer from great disabilities in respect of marriage and divorce.

The Indian Penal Code prohibits and punishes bigamy. But as section 494 of the Indian Penal Code does not apply to Hindu or Mahomedan *males*, who are allowed by law to marry more than one wife, it is penal for the *females* only. Under Hindu Law while a Hindu *male* may marry *any number of wives*, although he has a wife or wives living, a Hindu woman is prohibited from marrying another man while her husband is alive. Similarly, under Mahomedan Law, a *male* may have as many as *four* wives at the same time ; but it is unlawful for a Mahomedan woman to have more than one husband at the same time.

In the light of the Constitution these marriage rules do militate against equality of sex. If it be penal for a Hindu or Mahomedan *female* to marry another man in her husband's life-time or during the continuance of the first marriage, why should it not be penal also for a Hindu male to marry another woman in his wife's life-time or during the continuance of the first marriage ? Why should there be discrimination in this matter ? Why monogamy for the females and polygamy for the males ? It is high time that we do away with this artificial discrimination between man and

woman and make bigamy penal equally for both males and females.

It may be urged that marriage in the Hindu Society is a 'Sacrament', or that the institution of marriage among the Mahomedans has its source in their religion; and, so these special rules regarding marriage should not be touched by legislation. This argument, it must be submitted, is out-dated and can have no place in this changing world. The human society has advanced miles away from the days of *Manu* or the *Koran*. The orthodox doctrines, which might have had some utility in those olden days, cannot be adhered to any longer in the modern days. One rule for man and another for woman actually perpetuates the domination of man over woman. There can be no valid earthly reason for upholding the discriminatory rules. Monogamy has come to stay, and it is better that we adopt it both for males and females in recognition of the women's right to equality with men.

Marriage is, after all, a social institution having distinct and realizable objects. Hindu scriptures have raised it to the level of a 'Sacrament', the Christians call it a 'holy union' while the Mahomedans regard it as a 'civil contract'. Without going for high-sounding definitions and without quoting the so-called authoritative texts it is not difficult to observe two fundamental features of every marriage. One is the attainment of happiness for man and woman, the other being the procreation of children for perpetuating the family line.

Success or failure of every marriage has to be judged from this point of view. Considered in this light marriage-tie is nothing but a union of man and woman based on mutual understanding and love. So long there is love and mutual understanding between the husband and the wife, married life brings to both happiness and comfort. Bereft of love married life becomes a veritable curse and transforms itself into an unwholesome burden on life. Hence there can be no justification of compelling man or woman to continue the married life when that bond of love and understanding is gone. Whatever the orthodox people might say, a reasonable human being has to consider the problem from the view-point of happiness of man and woman. This leads us to the necessity of divorce as supplementing the marriage laws.

Hindu Law does not allow divorce in any form whatsoever. To it marriage is an indissoluble bond which can never be broken under any circumstances. Once married, the couple must continue as such. On no account can they be separated. No question of hardship or loss of love or mutual understanding can break the marital tie. Further, although a Hindu *male* may have some provision for avoidance of the tie with the undesired wife as he can marry another woman of his choice, a *woman* must have to remain content with her husband however loathsome or undesirable he might be or prove himself to be. She cannot get away from him so long she is alive. At best she can claim separate residence and maintenance from the husband on certain limited grounds. Of course, separate maintenance and residence can never be a substitute for a happy married life. Thus although a male may seek for happiness in married life in some round-about way, the *female* has no way open to her.

The Mahomedan Law, on the other hand, allows divorce. But it presents a highly anomalous position as regards the rights of man and woman. A Mahomedan male has the right to repudiate the marriage unilaterally without the consent of the wife. The period of married life can be determined by him at any time he wishes. He has merely to utter the word *talak* three times. He is not bound to show any cause.

A Mahomedan female could not have

divorce at all. She could, however, *with the consent of the husband,* break-up the marriage-tie by means of *khoola.* Under Mahomedan Law, she could only get divorce from Kazi on certain grounds, but cannot repudiate the marriage unilaterally without the intervention of the Court. Recently legislation has improved her position to a great extent. The Dissolution of Muslim Marriages Act, 1939 has provided for judicial divorce on the suit either by husband or by wife on some specified grounds. Thus we find that while a Mahomedan male can divorce his wife not only by the help of law-court, but also even out of court, a female can exercise her right only by bringing a regular suit. If we do not want to continue any discrimination against women, it is necessary either to curb the power of divorce as now possessed by males or to extend it to the females also.

The problem of marriage and divorce must be judged from the view-point of human happiness and social expediency. Therefore, should we compel a man and a woman to continue as husband and wife when they do not like each other, or allow them to divorce with mutual consent. It is submitted that the latter course would not only bring more happiness to human society, but also it would make both the parties more useful citizens.

Whatever religious grounds might there be, few would deny that a marriage, being the most intimate relation between two persons of opposite sex, must needs be a *voluntary* union of man and woman. The marriage-tie must also be a voluntary one so that it does not transform itself into a burdensome bondage. Marriage-tie should therefore continue so long the husband and wife find happiness in each other, so long they love and respect each other, so long one considers the other as his or her consort or companion. When that bond of mutual love and understanding is gone, what justification can there be to allow the marriage-tie to continue ? It is better that it is broken as soon as possible.

If the law-makers seriously consider this problem of marriage and try to reconcile the marriage-laws with the provisions of the Constitution, they must simplify the rules regarding marriage and divorce. If woman has to be raised to a status equal to that of man personal laws as regards marriage have to be reviewed and modified in order to bring them into consonance with the advancement of society. This necessitates a uniform civil law on marriage and divorce applicable to all citizens of India irrespective of religion or sex.

It is the consent of the parties, not their cohabitation, which constitutes a valid marriage.

—(*Co. Litt. 33a.*)

LAW AND THE GREATER PHILOSOPHY OF THE UNIVERSE

By

SRI JAGAT MOHAN DAS, (*Third Year Class*).

Law follows the greater philosophy of the Universe. The essence of the greater philosophy of the Universe can be depicted by the words *Satyam Shibam* and *Sundaram,* or that which is Truth, that which is beneficial arrangement leading unto invariable peace and order of the World and that which is beautiful leading unto perfection.

The first and foremost object of Law is the finding of the Truth; secondly, its object is to ensure peace and order unto all human beings by beneficial arrangement amongst themselves ; thirdly, the arrangement of the beautiful leading unto perfection of human kind.

Now to know the Truth, one must have the capacity to see the Truth in real entity. For Truth is that invariable entity which can neither be pictured nor written nor told. It can only be seen, perceived and realised, because, as soon as anything is pictured written or told, it becomes an image only—a virtual image of the Truth. It is not the Truth itself which has got an invariable entity and which if told or written or pictured at once become an image and a picture subject to all sorts of Physical abberations and practical deviations, deflections, refractions and transformations due to various causes.

So Truth can not be told. Anything that is told falls short of the Truth by being only a virtual image of the Truth absolute.

All languages of the world are defective or rather imperfect in expressing the real entity of the absolute truth which is invariable. So when the image of Truth is pictured or expressed through the medium of language, it becomes susceptible to all sorts of variations, practical abberations, deviations, deflections, and transformations due to the expression of the language, the character and relating capacity of the narrator, and the character and perceiving capacity of the hearer and various other causes.

Therefore, anything that is told or expressed through the medium of language becomes a defective image of the Truth. It is not the Truth. Truth by nature is absolutely an object of vision and of perception, not of expression.

So, Law has taken the course of evidence to establish the Truth. Evidence comes from the Latin word *'Evidentia'* meaning that which is evident or manifest. The Truth must manifest itself through evidence so that, it may be seen, perceived and realised. The image of the Truth formed by evidence shall be such that it is perfectly similar and equal to and coincide with the Truth in real entity. Any deviation, deflection or variation will entail a practical abberation and a variation from the real entity of the Truth absolute, and, therefore, the Truth is not established.

Therefore, to establish Truth the virtual image formed by evidence shall be such that it is equal and similar to the Truth absolute in all respects.

So if the Truth absolute be represented by the straight line TA, then then virtual image of the straight line TA represented by the straight line T'A' shall be such that

it shall be equal in all respects with TA and a perfect square can be formed with the two straight line TA and T'A' as two opposite sides or putting them at right angles.

Now if T'A' is so formed that it is not equal to TA then no perfect square can be formed and the Truth is not established. So, to establish, see, perceive and realise the real entity of the Truth this square of Truth is to be found out and formed by evidence.

This is the end of justice and one of the factors of the end of justice is to find out, form and establish the square of the Truth by evidence.

The reflecting surface of the evidence shall be such that the image of the Truth absolute shall not undergo any sort of spherical abberation, deflection, deviation, refraction or transformations. Every variation must be calculated to establish the square of the Truth.

The next object of Law is to ensure peace and order unto the human beings of the world by a beneficial arrangement amongst themselves. In this respect also Law follows the very hypothesis and fundamental proposition of the Greater Philosophy of the Universe ; the sum and substance of which may be depicted by the word SHIBAM or the beneficial arrangement by which the Universe proceeds. The Universe proceeds by arrangement, or by permutation and combinaion of its facts and factors. 'By permutation and combination the Universe is created, by permutation and combination the Universe is sustained and by permutation and combination the Universe proceeds'. And man, as a factor of the Universe whenever thinks he permutates. He can do nothing but permutate. Thus by permutation and combination or arrangement of its atoms and factors the Universe is created, sustained and proceeds. An atom arranged, an atom deranged, an atom displaced or an atom replaced—and the Universe proceeds;—the displacement or replacement of a single atom or factor of the Universe changes the whole system of the Universe outright, the Universe is arranged or permutated in a newer series which is not the old and the Universe proceeds. So the time advances,—the Universe advances. It proceeds by beneficial arrangement of its facts and factors and not by force. Force has no effect on the propagation and advancement of the Universe. Universe is inert to force. As soon as any force of destruction is set into motion all advancement of the Universe is stopped and remains inert until the force subsides. And then the Universe proceeds again by beneficial arrangement of its atoms and factors. So Universe proceeds by evolution and not by revolution. The beneficial arrangement of the atoms and factors of the Universe propels the Universe unto infinity. And Law as propeller and conductor of the human element and human action follows the philosophy and hypothesis of the propagation of the Universe. It strives to ensure the invariable peace and order unto all human beings by beneficial arrangement amongst themselves.

So Law follows the great unrevealed philosophy of the Universe which is manifested and evident throughout the vast wide and expanding Universe and which cannot be written, pictured or told: and which is self-evident, self-eminent, self-expressed and self-manifested in every atom and quintessence of the Universe,—and which can only be seen, perceived and realised. So Philosophy is 'Darsan'—a subject of vision and of perception, not of expression.

Following the philosophy of the Universe Law ensures peace and order and tranquility amongst men only by beneficial arrangement amongst them and not by force. In this respect the philosophy of

Law and philosophy of *Ahimsa* coincides. Law follows the philosophy of *Ahimsa* which is the same as and coincides with the greater philosophy of the Universe.—And Law is dumb when swords are at play,—Universe is inert and does not proceed when forces of destruction are at work.—Law begins its constructive work by beneficial arrangement only after and when the destruction effected by sword has ceased. The Universe remains inert, the Law remains inert when the forces are at play. Forces of destruction and of chaos stop all advancement of the world. And only the beneficial arrangement of law following the greater philosophy of the Universe,—the essence of which is depicted by the word SHIBAM can ensure peace order and tranquility amongst human kind.

The third and next object of Law is the attainment of the beautiful and of the ideal perfection by beneficial arrangement amongst mankind. Law strives to conduct and regulate all human activities by arrangement. All action proceeds from human thought,—and whenever man thinks he permutates. He makes permutation and combination of all facts and factors before him in his mind. Human mind can do nothing but make permutation and combination or arrangement of facts and factors before it. Practically, human brain is a great permutating machine. And the *modus operendii* of human brain is that it permutates, combines all factors before it, and observes the result. The human nervous system cannot permute all factors at a time ;—and here is the limitation of human thought. The limitation ranges from ${}^{1}P_{1}$ to ${}^{n}P_{n}$ i.e. if 'n' be the number of factors then the highest number of possible permutation is ${}^{n}P_{n}$ and the lowest is ${}^{1}P_{1}$ and all degrees of human intelligence are limited within this range. The more the number of permutations the brain can make, the more intelligent or sharp it is. Therefore, the difference between man and superman is that superman can make good deal of possible specialised permutations which the ordinary man cannot do ; and the difference between man and lower animal is that man can make much more special permutations which the lower animal cannot. So also the difference between the sane and the insane is that the permutations made by a sane person is logical whereas the permutations of insane persons are illogical and mis-arranged, due to the inherent defect in the function of the nervous system. A man is superman and omniscient if his nervous system can make all permutations simultaneously, which is not possible as yet. Human nervous system has not yet attained that stage of development as would enable him to make all the permutations at a time. Even at this stage of civilisation it makes much less and also defective arrangements or permutations as a result of which it falls short of the capacity to attain of the beautiful and the ideal perfection.

Therefore, law by beneficial arrangement amongst mankind strives to help man to the attainment of the beautiful and the perfection by the finding of the Truth, by ensuring invariable peace and order, and by regulating human conduct. It endeavours to lead man unto the ultimate goal of all beautiful and all perfection by way of all Peace and Order. And the attainment of "Sundaram" or the state of all beautiful and perfection is ensured unto man.

So the whole philosophy of law is expressed by the words "Satyam Shibam Sundaram", and is the substance and essence of the greater philosophy of the Universe. And by following the philosophy in a perfect way all actions of man can be regulated and systematised unto perfection. Crimes can be erased out of the world, punishment made redundant and all chaos and infirmities ex-

tinguished and a state of all peace and tranquility can be made to prevail.

So on earth Law ensures the peace and order by following the greater philosophy of the Universe—And man can attain the state of all peace and all perfection by following the Philosophy of Law—the Philosophy of Peace and the Philosophy of 'Ahimsa'—"Satyam Shibam Sundaram".

Peace be unto the air and water, peace be unto the earth, peace be unto the ethereal heavens, peace be unto all.

"It is not your function to decide whether your client has a good case or a bad case. The judge is paid to adjudicate on these controversies. Your function is to put the case in the best way possible."

—From Bosewell's 'Life of Johnson'.

EQUALITY OF STATES UNDER INTERNATIONAL LAW

By

SRI I. C. SANCHETI, (*Third Year Class*).

The Doctrine of equality of states meant legal not political equality of states because political equality never existed in the past. It means equality before the law. Legal equality of states was accepted inspite of physical inequality, just as among individuals within a state, where physical, mental, and financial inequality exists, but all are granted equal protection of laws. Recently the meaning of this concept has been changed. Oppenheim's formulation seems to correspond to the true meaning of traditional Doctrine. According to him legal equality has four consequences :

1. In case of any problem which has to be settled by consent, every state has a right to one vote only.
2. The vote of the weakest and smallest state has as much weight as the vote of the largest and most powerful.
3. No state can claim jurisdiction over another.
4. The courts of one state do not, as a rule question the validity of the official acts of another state insofar as those acts purport to take effect within the sphere of the latter state's jurisdiction.

However, Dickinson confines equality to "the equal protection of law or equality before the law" but denies "equal capacity for rights." Brierly takes the same view. The principle of equality is the principle of autonomy of the states as subjects of International law. If the equality of states means their autonomy it is not absolute and unlimitable, but a relative and limitable, autonomy which International law confers upon the states.

It seems that later writers who have attacked the traditional doctrine of equality have been more influenced by the actual practice of states and by political hegemony of the great powers, rather than guided by the legal principles embodied in this doctrine. Though political hegemony had never been recognised as implying also legal hegemony in any legal instrument prior to League Covenant and also in the United Nation's Charter, it may have functioned the same way in preceding centuries, especially in the nineteenth. The great powers acted as self-appointed law makers and the other states accepted the rules laid down by them. They laid down rules of international law which were accepted by all from the Congress of Vienna to the out-break of the first world war.

Even though the principle of legal equality on the whole was respected at the Hague Peace Conference of 1899 and 1907 both in formal organisation of the conferences and in the method of voting, yet prior to the establishment of the League of Nations, unequal representation and the majority principle were recognised in various international public unions. Here members usually had the choice of securing greater representation and hence of additional votes by paying higher contributions, and, furthermore, these organisations were concerned with technical matters where only lesser interests of states were involved.

Now we can conclude that under the existing international law the majority

principle and unequal representation are compatible with the doctrine of state equality only in purely technical and procedural matters where only the lesser interests of states are involved but are incompatible with that Doctrine in substantive, and specially legislative, matters where the more important or vital interests of states are involved.

The covenant of League of Nations gave the legal recognition to the political hegemony of great powers, or in other words, legal equality was changed to legal inequality in a limited sphere just as political inequality had always been recognised as an undeniable fact. Thus legal inequality came to be accepted as a result of the actual distribution of powers among states. The difference between the situation under the League of Nations and the U.N.O. is this, that while under the League, the countries which were legally treated great powers by giving them permanent seats in the council were in fact great powers,—the U. N. O. recognised some states legally great powers by giving them seats in the Security Council although they are not great powers in fact. Three out of five permanent members of the Security Council are recognized as possessing legal hegemony without having political hegemony.

On the basis of the situation, as found under the League, it might be concluded that the great powers were given the privileged position by granting them permanent representation on the Council and all other members of League were discriminated against by denying them permanent seats. This is no doubt prima-facie a violation of the principle of state equality. Nor there was equality of representation in the Council; the legal equality of the members of the League was really not impaired, because they were not bound by the decisions in which they did not participate or in other words they were not bound by their own consent.

A more far-reaching and more substantial modification of the doctrine of state equality is observed in the U.N.O. Article 2 of the U. N. O. Charter proclaims "the sovereign equality of all its members", on this point the League covenant was "discreetly silent," but there it was truer. By the term "sovereign equality" the charter seeks to express that it recognises the sovereignty and equality of all its members. On the other hand it states at the beginning of the document that the U.N.O. is not a super state. But as a matter of fact, this equality has been subject to considerable modification in certain matters, specially in one field, namly, international peace and security, the maintenance of which forms the main purpose of the organisation. Here equality has been transformed into inequality for all members of the United Nations except five permanent members of the Security Council, named in the Charter, which alone have retained their full equality.

It has been stated by the U. N. O. that unanimity of representation under League covenant has been abolished in all its organs. Looking towards the particular organ of the U.N.O. we find that equality of representation has been retained in some organs but not in all. There is no discrimination in the economic and social council of the U.N.O. because there is no difference between permanent and non-permanent members and all the eighteen members are elected by the General Assembly. But there is no equality of representation in two principal organs, namely, Security Council & the Trusteeship Council. In Security Council five great powers named in the Charter as the permanent members and six others are elected by the General Assembly. The Trusteeship Council is based partly on interest representation in that one half

of its members is made up of states holding trust territories (Trustee powers) which are, of course, permanent members of this Council. This interest representation is balanced by granting membership in regard to other half to the states which are not trustee powers and which have no direct interest in the administration of such territories.

According to the U.N.O. charter the members of the Bench forming the world court, however, were always and are now, individuals who do not represent the states of which they are the nationals and are elected by the General Assembly. Hence they are not delegates but independent judges. They may be elected from the citizen of a state who is not the member of the U.N.O. Therefore, the problem of equality of representation does not enter into the composition of the world court, although it can be stated that great powers are practically always 'represented' on the Bench of this court.

Further, we see that there is not only no equality of representation in the Security Council but also no equality of voting power whereas in the Council of League, although there was no equality of representation, there was equality of voting power for all members of the Council. Moreover, it has been shown, the Security Council has real powers of decision under chapter VII which the Council of the League never possessed. Hence, the obligation to accept and carry out the decisions of the Security Council entails a surrender of sovereignty to the organization to a considerable extent on the part of those states which are bound by the decision of the Security Council without their consent, either because they did not participate in the adoption of the decisions due to their non-members of the organ or because they are non-permanent members of the Security Council which have not concurred in particular decisions. However, the five great powers, are not only not bound by decisions of treaty obligations but they can ever prevent a decision from being made, by giving their veto. Thus the five great powers have been accorded a privileged position in the Security Council which singles them out from all the members of the U.N.O. There are other instances under the Charter in which the five great powers enjoy a privileged position by virtue of their permanent membership in the Security Council and, hence, can exercise the veto power whenever their concurrence is a *conditio sine quanon* for bringing about certain results.

A passage is best interpreted by reference to what precedes and what follows it.

—(*2 Inst. 173.*)

RANDOM REFLECTION

By

SRI MRINAL KANTA SEN GUPTA. (*Second Year Class*).

Culture :

The characteristics of our present day society can be summed up—briefly as intellectual bankruptcy. At first, it may seem that the statement is paradoxical as the modern society is proverbially known to be surcharged with an aroma of intelligence. But if we ponder over the subject, I think majority will agree, if not all, that we have ceased to think and act rationally. We are the products of this century and naturally we have a sense of bravado about the achievements of our present age. It is indeed a veritable self-complacency. If we analyse ourselves and vivisect the present society it will be obvious that what we have achieved after centuries of struggle and suffering—we are trying to destroy it in our craze for 'progress'. Evils reign rampant all over the present world. We have ceased to appreciate the 'higher values' of life. Culturally we have fallen as if in a 'snake pit', from which we find no easy outlet. Question naturally arises in every heart—should we profit by this state of affairs ? Our intellectual crisis must be overcome if we are to live and survive in the cross-road of our destiny.

Civilization :

The edifice of modern civilization has been built layer by layer through centuries of struggle and suffering against all kinds of heavy odds of nature. Mankind has suffered lot to reach its present position. Glory to man who has achieved it. But we should pause a while to look deep into the matter—should we call it achievement ? Civilization is crumbling to pieces by the clashing of arms. The world is torn off by heterogeneous ideologies each claiming its intrinsic superiority. From the pre-historic days we have advanced on and on up to the middle of the twentieth century—but still the question looms large in every heart —what have we achieved and to what an extent ? Every day we look into the pages of the news-paper with great trepidation—has war been declared anywhere in the world ? This civilization of ours is going to be destroyed by self-seeking politicians to satisfy their love of power. The world of ours is to-day suffering from sores of jealousy, hatred, selfishness and envy. The conclusion is irresistible that the elementary truth of life has vanished in the air. The result is, humanity is totally divorced from 'moral wealth.' The world is diffused with a sense of despair, disappointment and discontent. The tune of life is broken. Music has ebbed out. Culture and civilization are on the verge of total eclipse. But we are forced to believe it—our mind does not reciprocate the above feeling when we see remarkable advancement all over—economic and scientific. The need of the hour is an answer to the above question. Why should there be this mental poverty in the world of plenty ?

Man :

Some eminent scientist remarked man as an accidental by-product of the universe. Naturally it wounds our feeling when we see we are minimised. Perhaps, its object

is to emphasise the point that undue importance which is hitherto attached to man, must not always be given. Man has been eulogized since the dawn of civilization. But now it is high time we should assess our respective worth. Man has emerged, triumphantly as the highest species of the earth through the process of evolution and as a result man has been defined as a 'rational animal'. To my mind now this definition does not bring out the full connotation of the term. Perhaps it was appropriate in some by-gone days, but now it is out of date in this world of medieval savagery and brutality. Man has lost his pristine purity—purity of purpose and aims. The result is that we seem to be dwelling in a 'waste land' surrounded by fog and mist from all quarters. Our life has become a shabby monotony. City life with all its ailments, over-crowded streets, din and bustle and uncongenial atmosphere seem to suck our life blood. As if we have fallen in a 'spider's web' from which we find no way to come out. Our occasional attempt to get rid of such depressing circumstances never succeed, and finally, we never reach our 'destination utopia'. We simply indulge in fruitless attempt. We simply know how to earn but not to live. Every day does not usher a new dawn in our life but on the contrary, it intensifies our sorrows and sufferings. All round there is absence of consciousness and inspiration—only false vanity, ignorance and superstition are reigning rampant. The individual element must be improved—the cadre must be created to usher a new era of civilization. The potentiality of individual soul must be improved upon and drawn out to build up a new social order based on noblest specimen ; otherwise, all tall talks about radical ideologies will fail. The problem, therefore, is—should man or an individual be sacrificed for the collective or the collective for the individual ?

Science :

Science has been defined as a systematic study of a subject. It presupposes a detailed rational analysis instead of haphazard investigation. It is convenient here to refer casually to the etymological meaning of the term than to indulge in some scholastic discourse. Science has been degraded —so goes the saying. Perhaps the observation seems to be pessimistic one. But if we go deep, the truth will be out. Frankly speaking in the vortex of the world situation the scientists seem to have lost their goal—in their endeavour for the speed and so-called prosperity. The history of the science is a rational and realistic investigation which is again an alternative to mediaeval sorcery and spiritual prognostication. The present age, is described as scientific one unlike the superstitious period of our by-gone days when paganism reigned rampant. To the modern man, nursed in the lap of science,—such an attempt to decry science seems to be rather a cynical observation. But realities can never be concealed by the ornamental glamour of science. Scientists are too busy in the laboratory for inventing new and novel engines of death and destruction. The aim of science to-day is not to ameliorate the ills of humanity or to multiply the happiness of the world population but to sing an 'eternal lullaby' to our civilization or to annihilate everything we hold dear in the bosom of Mother Earth. We are sufficiently cognisant of the horrors of the war. We have not yet recovered from the nervous flutter of the second world-war. No sooner had it ended than the nightmare of war is hovering over the horizon threatening a total eclipse of civilization. So we have read 'human guineapigs' are being experimented somewhere in an island. Bacteriological warfare is being attempted somewhere to annihilate the

human species altogether. Should science succeed in invoking a spirit of regeneration by offering solace to the agonised soul or to sing requiem of our civilization—a question which posterity will answer.

Politics :

Random reflection will not be random unless I cast a side glance to the field of politics. Politics is a term which is very hard to define. Immense complexities will arise from any definition. Modestly it may be described as a science of Government. Politics presupposes to ameliorate the ills of masses—to solve the problem of poverty and starvation by the administrative machinery viz. Government. The motive of power is totally absent from it—unless we go to the extraordinary length of metaphysical thinking, maintaining human action generated from the incentive of power. Politics breed extreme passion. And as a result we become passionate advocates of extreme creed. We uselessly indulge in Typhonia wordy duel—in such a craze we detract from the ultimate goal. Who will argue with those political pot-boilers that good cannot be achieved through such mutual bickering and political animosities ? The rational solution recedes in the background in such an atmosphere. Particularly, students now-a-days have developed a craze for one or other extreme political creed. They have a natural inclination to the ideological fancies which usher before them an era of millennium—which again can hardly be attained. Resolutions we have passed—meetings we have held, speeches we have delivered—but ultimately to what effect ? Ignorance, superstition, hatred are still sucking the life-blood of our nation. Students are led astray by the political demagogue who made them surrender to their game of domination, eulogizing before them the idea of political martyrdom. We must go to the base—the cadre must be created for the success of any ideology. Let us retrace our steps. Leaving aside the controversial aspect why not develop a 'Municipal' attitude to the problem of politics, by establishing night schools, clinics, libraries, hospitals, work-centres.

Extremism as a creed has been condemned by thinkers of all the ages. We are to choose between the two extreme creed—on one hand the soul-killing totalitarianism and, on the other, the fake democracy based on economic inequality. The former aims at the regimentation of human society. That's why it presupposes to plan literature even just to kill the creative urge of man—in reducing human species to some 'mechanical unit' or "electronic brain" to cater to the needs of political parties. As for the latter, the less said the better. The time has come, if we at all want a better society, to pause and think ; a sense of polity must be developed as politics is no politics when divorced from polity.

Literature :

Literature offers solace to the human soul —because man is not matter alone but a perfect union of matter and spirit. It will be a fallacy to label to literature as Das Capital of Marx or Sigmund Freud's Psycho-analysis.

Apologising for the diversion let us refer to the problem of politics viz., democracy. The latter aims to befool masses with empty shibboleths. My answer to those passionate democrats is just to quote an utterance of some eminent persons—democracy does not mean counting of heads *but what is in the head*—not of quantity but of quality. Truth will come out, I think, in the tranquil period of human history ; in the meantime, let us hope for future.

So long I had been troubling my readers with my random reflection. Perhaps they have been bored to a great extent. Now it is high time for the epilogue. Reflections have been crystalised by lapse of time. The night is over. Temporary darkness is receding in the back-ground. My senses seem to have been benumbed by the darkness of the night. The evil spirit of night seems to lead us astray, that is why I have talked so much about the seamy side of life. The dawn has come, curtain has been lifted. The dove of hope and aspiration is singing. The air is echoing and re-echoing the message of hope. I am not a cynic nor a pessimist ; the temporary oscillation that seems to darken the horizon will be over and prosperity will reign over our 'troubled Planet'. I believe in the ultimate triumph of humanity. I cherish a complete regeneration of human society from this chaotic condition. I believe that from the 'blind lane' of life—from sorrows and sufferings we will find an avenue of Peace and Happiness.

A candidate appearing for a University Examination, who admittedly obtained pass marks, was disqualified from obtaining the Degree because the University Authorities were of opinion that the candidate had adopted unfair means at the Examination. (This was detected by the Examiners). The decision was reached without giving the candidate an opportunity to defend himself. Has the Court jurisdiction to interfere under Art. 226, Constitution of India and to direct the University to forbear from giving effect to their order of cancellation? (Yes). See Art 226, Constitution of India.

—AIR 1952 CAL. 594.

CONSTITUTION : A GENERAL SURVEY

By

SRI SHANKAR KUMAR BASU. (*Second Year Class*)

In all societies, politically organised, there must be a person or a body of persons who exercise the governmental power over the rest of the population who may be termed, the subjects. The component parts of these governing elements and their relation to the subject governed as well as to each other, form the subject matter of the constitution of any given state. Ever since the origin of the state, therefore, there must have been rules or custom or usage regulating these relations. Such rules might have been originally very few, because the governmental powers in its origin must have been arbitrary and uncontrolled except by some sort of reasonable common sense. Power exercised by an absolute monarch or a sovereign church might be technically different. It is only when the political sense of mankind developed, it was felt necessary to evolve certain definite rules of conduct regulating and controlling the exercise of the governmental powers for the benefit and satisfaction of the governed.

Let us not think therefore, that the 'Constitution' is a thing over which nobody can have any say or it is a thing which is beyond any human control. As Thomas Jefferson puts it, "Some men look at constitutions with sanctimonious reverence, and deem them like the ark of the Covenant, too sacred to be touched. They ascribe to the men of the preceeding age a wisdom more than human, and suppose what they did to be beyond amendment ..... Laws and the institutions must go hand in hand with the progress of human mind..... We might as well require a man to wear the coat that fitted him as a boy, as civilized society to remain ever under the regime of their ancestors". Thus, were defined gradually the ambits of power and authority of different organs of government as well as of the duties and powers of the government as a whole vis-a-vis the governed. Such rules are to be found even in the earliest known state and even in the 4th Century B.C. we find political thinker like Aristotle making a comparative studies of different constitutions.

All constitutions, therefore, can be resolved into a statement of the component organs of the government, viz., (a) the Executive, Legislature and the Judiciary and their powers and mutual relationship, (b) the Rights and Duties of the Subjects and (c) the relationship between the Government and the Subjects.

The contents under each of these headings may and do often vary in different constitions, for example, in an absolute monarchy the entire governmental power may be centered in one person and there may not be many rights on subjects at all and the relationship between the government and the subjects may amount to a duty of obedience alone on the part of the latter. On the other hand, in another constitution there may be a more complex arrangement with meticulous separation of powers among the organs of the government with mutual checks and balances and with carefully enumerated rights of the subjects. But it must be emphasised that though the contents of such rules may differ, all constitutions can be thus analysed.

Constitutions have been divided into Unitary and Federal, Rigid and Flexible, Written and Unwritten. These distinctions are overlapping and merely illustrate the different aspects from which such distinctions are made. Thus a unitary constitution may also be a written and rigid constitution, for example, the Constitution of the Union of South Africa. A federal constitution, on the other hand, may also be rigid and written, for example, the Constitution of the United States of America. There may also be a unitary constitution which is unwritten and flexible, for example, the Constitution of the United Kingdom.

A unitary constitution is one where the powers are centered in one government in the State : federal constitution is one where such powers are distributed among many units of the component whole.

A written constitution is one where the entire constitution is embodied in a document or a series of connected documents.

An unwritten constitution is one where it is not so embodied.

A flexible constitution is one which can be amended by an ordinary legislation, a rigid constitution is one which can not be so easily amended. The Judicial Committee of the Privy Council has favoured the expression "Uncontrolled" and "Controlled" in substitution of 'Rigid' and 'Flexible' respectively. As observed by Birkenhead, L.C., ". . . . . Many different terms have been employed in the text books to distinguish between these two forms of constitution. The special qualities may perhaps be exhibited as clearly by calling the one a "Controlled" and the other "Uncontrolled" constitution as by any other nomenclature. Nor is a constitution debarred from being reckoned as an uncontrolled constitution because it is not, like the British Constitution, constituted by historic development, but finds its genesis in an originating document which may contain some conditions and cannot be altered except by the power which gave its birth. It is of great importance to notice that, where the constitution is uncontrolled, the consequences of its freedom admit no qualification whatsoever. The doctrine is carried to every proper consequence with logical and inexorable perception (M'cawley *v.* The King 1920. A.C. at page 691). Therefore, as we find, a rigid constitution must necessarily be written but a written constitution can none the less be flexible if the same admits amendment by ordinary legislation. The loose way in which written and rigid, and unwritten and flexible, are classed together respectively by political theorists is certainly erroneous.

LAW AND LIBERTY OF THE PRESS

By

SRI ANJAN KUMAR BANERJEE. (*First Year Class*).

"Give me the liberty to know, to utter,
and to argue;
Freely according to conscience, above
all liberties."

—(John Milton).

The press of to-day is an important and inherent element of progressive civilisation. Its value in all the spheres of the society is immense. Its views influence governments and war. Its comments reflect public opinion on crucial subjects. Its integrity is its bulwark.

Servitude steels a national press which again steels the national will. The history of the freedom is shot through with the service of the press as its staunchest champion. In every age, in every country, the enemies of press freedom are the enemies of people's freedom. Power and prestige are almost always ranged against liberty of free thought and speech and action which would make a finer civilisation and of this good earth a grand heritage. A free nation cannot maintain its freedom without a free press. Jefferson rightly said that if he had to choose between a government without newspapers and newspapers without a government, he would unhesitatingly choose the latter. This is why President Roosevelt in his famous speech on the "Four Freedoms" gave the place of primacy to Freedom of Speech.

In many countries, the freedom of the press is nominally guaranteed by law, but this does not lead to the conclusion that this liberty is really enjoyed. Sometimes the solemn declaration of the law that the printing press is open to everyone, who wants to express freely his opinions and thoughts, is followed by so many restrictions and limitations that this freedom remains practically on paper only.

The right of the press to speak its mind was for the first time embodied in the constitutions of France and of the United States. These two events took place almost simultaneously.

The French National Assembly in the meeting of the 24th August, 1789, passed the famous definition of the press liberty. 'The free communication of thoughts and opinions is one of the most precious rights of mankind. Therefore, every citizen may express his views by words, writings, and printed matter, but he will be held responsible for any misuse of this liberty in cases circumscribed by law.' However, before this article came into force, the United States of America had incorporated the declaration of press liberty in the constitution (The First Amendment of the Bill of Rights, 1791) and thus had become the first state to lay down this right in a law. According to it, the Congress shall pass no law restricting the liberty of the press and other rights such as freedom of religion, speech and meeting. In the same year of 1791, the definition of the press-liberty mentioned above was added as Article 11 to the French Constitution.

These two proclamations of the press had a far-reaching influence. The Belgian Constitution pronounced with pride, after

the victorious Revolution in 1830, that there would be no more censorship or regulations to supress the free speech. Such assurances for the future are to be found in the constitutions of many states of the American Union, e.g., Virginia, Arkansas, Minnesota, Kansas, Maryland, North Carolina and Mississipi.

But these solemn declarations were not translated into realities practically in all the countries. France is certainly the most marked example of it. Following the ups and downs of the political development of the country, the French Press experienced time and again the various phases of liberty and restrictions. During the great Revolution as well as in the years of 1830 and 1848, when reactionary governments were overthrown, newspapers in France enjoyed unfettered freedom based upon the most generous press laws, while during the intervals, the press lost step by step all its rights, until it was completely muzzled, e.g. after the return of the Bourbons (1814-1830) and in the reactionary era of Napoleon III (1852-1870). But with the great revision of the French Press laws in 1881, a period undisturbed by political reverses started, which finally brought into the French Press the blessings of a long spell of liberty.

Each state has certain laws that guard the citizen against injury through the publication of objectionable newspaper articles. These are called libel laws, and a suit instituted on the strength of the principles they set forth is called a libel suit or action. "A libel", according to the Illinois Criminal Code, "is a malicious defamation, expressed either by printing, or by signs or pictures, or the like, tending to blacken the memory of one who is dead, or to impeach the honesty, integrity, virtue or reputation or publish the natural defects of one who is alive, and thereby to expose him to public hatred, contempt, ridicule or financial injury. "This law functions very harshly against the press. The legalistic interpretations of libel, contempt, sedition, the exposure of Cabinet secrets and so forth, are becoming so narrow and so rigid as to be in danger of threatening the right of fair comment on matters of public interest. Newspaper editors have to walk warily ; for they know they will get no mercy if they fall, however unwillingly, into the clutches of law. No privilege attaches to his position. In the countries of the British Empire, particularly in Great Britain, Jurors are inclined to award high damages in libel actions, incomparably higher than in the United States of America, although the legal basis for such awards is the same.

In bringing India to freedom, India's press fought an army of alien vested interests and press-laws for decades. Inspite of the duress, the repression, the arrogance in the attempt to circumscribe the liberty of the Indian press, Indian journalists passed with clean hands the torch of their unwritten charter to others who rose to the occasion with flying colours. In fact, Press censorship was imposed for the first time in Bombay, Madras and Calcutta. In 1818 Lord Hastings abolished censorship. During the regime of Lord William Bentinck the Indian Press was kept informed by the government on affairs of State and was free to criticise them freely. Since those early days of British Indian connection, censorship was relaxed or tightened according to the intensity of the cleavage between British and Indian interest. The evolution of Indian nationalism from fawning to fearlessness which the Indian Press since the days of East India Company fostered and nursed despite censorship is largely the story of slow but steady triumph of free expression of Indian opinion. And the Indian Press holds an honoured position in that story.

It is a pleasure to note that the right of the citizen to the fullest possible informa-

tion was given expression to the basic United Nations pronouncements and for the past four years the U.N.O. has devoted much time to the discussion of freedom of information.

Mr. Neville Chamberlain once said, "If the public are not allowed to know the facts but are only allowed to hear what their rulers choose them to hear—that people is in danger of being led to the march on a course which may presently lead it to disaster. Free speech and a free press are great educators as well as great guardians of a people's liberty." Every progressive government should sanction the liberty to the press. And given the free-play the newspapers of the future will cover a much wider field of news, probe more deeply into the great world of ideas and would consequently, play a much greater part in the daily life of civilised peoples. The newspapers of to-morrow, if they are not smothered by the State, will be as numerous and variegated as life itself and will contain something of the gaiety, vitality and warm colouring of the Shakespearean philosophy. These may seem like the words of nebulous optimism ; yet the future press will be free to draw upon the rich resources of modern culture as well as upon a wealth of material inventions. To those, therefore, who wish to enter the Holy of Holies of the Fourth Estate, whose passion for service may lead them from Gethsemane to Calvary, I stretch the hand and heart of comradeship.

"Law is not right alone, or might alone, but a perfect Union of the two. It is justice speaking to men by the voice of the state."

—Salmond.

OUR 'FEDERAL' CONSTITUTION X-RAYED

By

SRI SUBIR CHANDRA MAZUMDAR, M.A.

(First Year Class)

The true import of our so-called federal constitution has been subjected to scrutiny from diverse quarters. An academic survey will be endeavoured in a concise compass.

"One of the most urgent problems in the world to-day is to preserve diversities either where they are worth preserving for themselves, or where they can not be eradicated even if they are not desirable—" Says K. C. Wheare, "and at the same time to introduce such a measure of unity as will prevent clashes and facilitate co-operation. Federalism is one way of reconciling these two ends." How far the federal structure that we have created corresponds to these ends may be seen.

Any serious student of constitutional law will point out that powers have been so distributed between the centre and the component units that even in ordinary peace time the States' powers might be reduced to such an unsavoury extent that would turn them into 'magnificent municipalities' or rather, into 'glorified District Boards'.

Some people believe that in actual practice healthy conventions will grow in our Republic which will prevent unnecessary interference by the centre with the autonomy and jurisdiction of its constituent States. The present tendency does not point to that direction. We fail to agree with Prof. Dicey that federal government necessarily means "weak Government." We may not be misunderstood to state that a number of provisions in our constitution are outrageous in character, Art. 22 (7) ranking the list. Mukherjee J. very aptly remarked in A. K. Gopalan *v* The State of Madras [S. C. R, 1950 (250)] that 'No country in the world that I am aware of has made this (Preventive detention) an integral part of their constitution as has been done in India. This is undoubtedly unfortunate . . . .' Thus we find that 'Preventive Detention' Act is unknown in any system of civilised jurisprudence. Art. 17 states that " 'Untouchability' is abolished and its practice in any form is forbidden." But unfortunately what is 'untouchability' has not been specifically stated in the constitution.

Financially the states, part A and B, have been placed in an embarrassing position of relying upon the oscillating benevolence of the Central Government. Increased financial resources in the centre breed a desire to keep what it has got and if possible to get more. When 'Emergency Provisions' under Part XVIII of the Constitution will be put into operation, such sweeping powers will come to be vested in the Central Government. The machinery of co-operation is so far rudimentary in most federations and ours is no exception.

To quote Professor Wheare from his treatise on 'Federal Government': "In Australia both the Loan council and the Premiers' conference provide examples of a kind of institution which offers a prospect of success. There is a flexibility about the co-operative method and the co-operative institutions, too, which can help to harmonize the legal divisions and conflicts which

are unavoidable in a federation." Some such body as the 'Loan Council' is urgently required for financial harmony and balance in this country. The regional Governments have occasionally felt in different federations that their position is imperilled ; that they are donning the role of mere pensioners of the Central Government. Even in several instances they have felt so unceremoniously treated by the Central Government that they have even thought and talked of leaving the federation. The Secession movement of W. Australia was one such example. S. Australia and Tasmania have also entertained similar fears and hostilities. If our Republic is to endure, it must attack the root causes that account for these fissiparous tendencies within the constituent states and try to remove them. The federal principle that has been enunciated in our case should be modified as is increasingly done to-day in the public finance of U.S.A., Switzerland, Canada and Australia. In the Dominion of Canada, whose quasi-federal constitution we have followed to no mean extent, small as well as big regions have exhibited the increasing modern tendency of self-assertion. They resist the unwholesome encroachments of the Central Government. One is naturally convinced that the component States of the Indian Republic should trace the footsteps of their Canadian counterpart.

No one can speak too optimistically about the prospects of federal, better quasi-federal State organisation we have set up. The working of the constitutional machinery for the last thirty-six months in this country shows that the Central Government is not anxious to share powers which it has been in a position to acquire entirely for itself. One would like to emphasise that the centripetal elements in the Constitution have been made exceedingly pronounced and cumbrous.

In conclusion, it may be stated that in spite of several laudable provisions, the Constitution which the framers say the People of India have given unto themselves, has been made unduly complicated perhaps due to over-caution. The working of it for several years to come will reveal how much effective and workable it is for the future governance of this country.

Where a student of a college is expelled from the college, is it necessary that he should be given an opportunity of being heard before the Authority taking action?

(No. It is enough if an opportunity of making a representation is given).

—See Calcutta University Regulations, Chap. XXIII. Ss. 26A, 33. (AIR. 1952 Cal. 238.)

LIBERTY VERSUS AUTHORITY

By

SRI SUBHAS CHANDRA BASU, M.A., (*First Year Class*).

The central but age-old problem of political philosophy which has engaged the attentions of the philosophers from dim past to the present day, is the ascertainment of the relation between the two main, yet apparently contradictory prerequisites for the making of society—the liberty of the individuals taken into isolation and the authority of the corporate life i.e. the State.

The end to which the State is destined is the attainment of "good" or acme of perfection and that can only be attained if the State can rightly channel all the divergent elements of "values" to the direction leading to the "ultimate good." From this point emerges various socio-political doctrines, the main of which are Authoritarianism and Individualism and another guiding concept of political philosophy which is known as "progress". Authoritarians claim that this progress can only be achieved if the individuals completely merge them within the State—the vast network of the Social Values and the unity manifested in an ideal manner—governed by a few naturally gifted enlightened elite, sufficiently endowed with all the attainments of ideal administrators and if the individuals unquestionably obey the rules and regulations, as laid down by the Elite which will lead them to the right path beaconed by ultimate human welfare. This is the facade of the whole doctrine of Authoritarianism deified by the Idealists like Plato, Hegal, Bosanquet, Trietschke, etc.

The individualists, on the other hand, with their irreverent attitude to the Metaphysical Theory of Statehood, take their vigorous stand against the "maloch-like demands" of the absolutist State. In their utter chagrin against the idealists they contend that in the authoritarian State only the phlegmatic people and languid individualities are created, since, in such a State, the citizens are kept as if in a seraglio strictly guarded by austere laws and regulations. Here the values are crushed, the sanctity of man is lost and what remains is an imbecile multitude and prematurely simile manhood. Thus the individualists emphasise that when the consciousness, reason and worth of the individuals are lost most fundamental law of moral order, justice loses its guarantee. Hence the individual's thought and conscience there are. Therefore, the society should be organized in such a manner that every individual should be left with the required amount of liberty for the attainment of good life, the quintessence of which is to "do by free will, those things which we feel to be worth while." Thus the individualists put a "note of interrogation" behind every act of the government and put apotheosis of the old Jeffersonian principle that "that government is the best which governs the least." They emphatically conclude, to quote Laski, "The ultimate isolation of the individual personality is the basis from which any adequate theory of politics must start."[1]

Hence the problem between the Individual and the State, between liberty and authority, between freedom and law. For

[1] Liberty in the Modern State, p. 59.

the realisation of social progress, the State demands unquestioning obedience from the individuals who, on the other hand, for the same purpose crave liberty in the spheres of their life. To put the problem precisely in the words of George Catlin : "The major problem of human society is to combine that degree of liberty without which law is tyranny and that degree of law without which liberty becomes license . . . Freedom of another cannot be permitted unrestricted scope since it may conflict with my freedom ; and authority in another is to be restricted lest it extends itself over me by encroachment."

Like the 18th century individualists, our natural impulse is to show that Liberty and Authority are contradictory to each other and that every law is an encroachment upon freedom. But this is a false antithesis. History furnishes many an example that men escape from one type of authority merely to embrace another type of bondage. Long ago John Locke discovered that where there is no law there is no freedom ; W. E. Hocking goes so far as to say that the greater the freedom a man demands, the greater is the authority to which he submits; Harold J. Laski rightly observes that freedom with certain restraints adds to human good; and Benedatte croce speaks sound: "Liberty struggles against authority, yet desires it; authority checks liberty yet keeps it alive or awakens it, because neither would exist without the other."[2]

It necessitates, in this place, a discussion of the concept of liberty from the following view points :

First, liberty is a social concept which implies that as a social element it should be equally shared among all the members of society and this is quite inconceivable if there is no law in the shape of restraint enforced on and accepted by all the members of society. An excess of freedom contradicts itself and hence the establishment of liberty requires organization of restraint. Thus the mission of the 18th century individualists to liberate the entire people from governmental control is nothing but a meaningless superstition.

Secondly, as W. E. Hocking points out, liberty consists in specialization which means authority, i.e., the submission of a mind to a superior mind. In other words, if we conceive liberty in the sense of positive opportunity for self-development, it is then a creation of law and nothing that can exist apart from legal order.

Thirdly, liberty is imperative for the development of personality through self-guidance. Then "liberty is the condition of mental and moral expansion and of all forms of associated as well as personal life that rest for their value no spontaneous feeling and the sincere response to the intellect and of the will."[3] But this again takes us in the arena of "restraint" in the sense that as the main duty of the State is to develop the individual personality to the fullest extent, it is quite impossible without an organized system of control in which only there is the possibility of making this liberty available for all socio-political beings. Moreover, though the object of control is to enlarge the scope of liberty rather than to restrict it, yet it is inapplicable among those who are incapable of self-guidance. Liberty does not exist for them and for them society will act as guardian and may constraint them for their own good. But this is a mere exception to the general rule that "a normal human being is not to be coerced for his own good, because as a rational being, his good depends on self-determination and is impaired or destroyed

[2] Politics and Morals, p. 14.
[3] L. T. Hobhouse : Social Evolution and Political Authority, p. 200.

by coercion."[4] This is the view of noted philosophers like Kant, Humteoldt, Green, Laski, MacIner and Sri Aurobindo.

Lastly, libery to be fruitful should stand for self-expression which involves the idea of groups-majority and minority—and necessitates the uniformity of conduct and action among groups through social legislation, i.e., restraint.

Side by side, we should also consider the idea of law. Law is the interaction of numerous social forces, a product of the general will or genuine desire of men composing the society ; an expression of general resolve; the issue of the joint efforts of the people for the promotion of general welfare and the deductions or generalisations from our experiences. Though its main feature is compulsion yet it is not irksome because it can never violate the individual potentialities upon which it is based. It is our prescription for ourselves and hence "obedience to law", in Rousseau's words, "is liberty". In other words, man in State is the author of the State laws and when he obeys those laws from the impulse of self-perfection, he becomes free. Thus, though the laws are the instrumentalities of the State characterised by compulsion, yet, to quote Laski, "it is not merely a command ; it is also an appeal."

A new concept—the role of the State in social life of men—issues out of the previous arguments and in the enunciation of this idea lies the conclusion of the age-long dispute between law and liberty.

The true function of the State is to secure those common ends which general will of society recommends and which cannot be secured without organized system of control. The main business of social restraint is to adjust one right to another by which the State can secure the best condition of collective life in which harmonious development is hidden. To put it in another way, the State will act only in three capacities —as an arbiter, a moderator and as an adjuster of institutional interests. Truly has Mr. Branslaw Malinowski has asserted, in his "Freedom and Civilization," that in the co-ordination between individuals and associations through the proper execution of social laws the harmony within the society is achieved and it is in this role that the State is essentially peaceful in character and becomes the best guarantor of freedom.

But we must not overapply this doctrine, as has been done by the champions of authoritarianism in the history of political thought. Though the State is the embodiment of unity and uniformity , yet it should not encroach upon every sphere of individual's life. For, as Sri Aurobindo says, ". . . . while diversity is essential for power and fruitfulness of life, unity is for its order, arrangement and stability . . . . . while the life-power in man demands diversity, his reason favours uniformity . . . . . In this harmony between our unity and diversity lies the secret of life . . . Until we can arrive at that perfection this method of uniformity has to be applied ; but we must not overapply it on peril of discouraging life in the very source of its power, richness and natural self-unfolding."[5] Hence, "all collectivist ideals (which is based upon absolute uniformity) envisage a static condition". "All unnecessary interference with the freedom of man's growth (which is the foundation of real and permanent goad of all) immolates the individual to a common egoism and prevents so much free room and initiative as is necessary for the flowing of a more perfectly developed humanity."[6] Thus the Act of Parliament cannot create

[4] Ibid., p. 202.
[5] Aurobindo : Ideals of human unity, pp.194-196.
[6] Ibid., pp. 31-32.

good citizens, since no force can compel growth. Personality in which rest the elements of social value grows from within and can never be created by outward order. The primary function of the State as the outer agency of control is to provide suitable conditions for, and to hinder the hindrances that come in the way of, the development of personality as far as those "conditions" demand concerted action and uniform observances. Thus, to quote the authority of Sri Aurobindo, again, "Human society progresses really and vitally as law becomes the child of freedom ; it will reach its perfection when the spontaneous law of his (individual's) society exists only as outward mould of his self-governed inner liberty."[7]

Thus the following conclusion is irresistible. There is no antithesis between the right of the individual and the welfare of the State i.e. restraint. For the social progress individual liberty and social authority are the two inseparable elements, since as Prof. Bertrand Russell rightly says—"without control (i.e. authority) there is anarchy ; and without initiative (i.e. freedom) there is stagnation."[8] The initiative must belong to the State and its execution to the individual, and that gives us the widest possibilities for the attainment of ideal social order.

Therefore, there is no true opposition between liberty as such and control as such, as every liberty rests on a corresponding act of control, but, to quote Professor Hobhouse to substantiate the conclusion, "the true opposition is between the control that cramps the personal life and the spiritual order, and the control that is aimed at securing the external and material conditions of their free and unimpeded development."[9]

[7] Ibid., p. 198.
[8] Bertrand Russell : Authority and the Individual, p. 88.
[9] L. T. Hobhouse : Liberalism, p. 147.

"Law is the King of Kings, far more powerful and rigid than they; Nothing can be mightier than law by whose aid, as by that of the highest monarch, even the weak may prevail over the strong."

—From the Vedas, Quoted by Holland.

ON WORLD GOVERNMENT

By

SRI R. K. ANAND,
(*First Year Class*).

In 1929, Mr. Winston Churchill observed: "The disproportion between the quarrels of nations and the suffering which fighting out these involves ; the poor and barren prizes which reward sublime effort on the battle-field; the fleeting triumph of war; the long slow re-building ; the awful risks so hardily run ; the doom missed by a hair's breadth, by the spin of a coin, by the accident of an accident—all this should make the prevention of another great war the main preoccupation of mankind." The modern implications of this are profound because after Hiroshima and Nagasaki it is clear that any further war spells cosmic annihilation.

It is indeed a sad commentary to human understanding that after all the fruitless internecine wars of the past man still refuses to realize that war is the negation of truth and humanity, that although war may be unavoidable sometimes yet its progeny are terrible—mass slaughter with finesse and "the deliberate and persistent propagation of hatred and falsehood which gradually become the normal habits of the people." (Nehru).

In India, Mahatma Gandhi taught us that any society based on injustice must necessarily have the seeds of conflict and decay within it so long as it does not get rid of that evil. That was the essence of Gandhiji's message and mankind will have to appreciate it in order to see and act clearly.

Should we have another era of misery and chaos, or an age of world co-operation and world federation based on international fraternity ; which is going to be in future ?

In the present 'cold war' atmosphere it seems that there is no immediate prospect of an understanding between the American and Soviet blocs—and without this entente cordiale a World Government is hardly attainable. The situation is, however, not devoid of the proverbial silver living. Consider, for instance, the play of political forces today. The two blocs are engaged in a constant sizing up of the destructive potentialities of each other and are certainly not oblivious to the possible consequences of a third global conflict. But their Armament Programmes at the same time involve a grave threat to their internal economics. Further the differences between free enterprise and collectivism as practised in the U.S.A. and U.S.S.R. respectively are not quite so acute as they are made out to be. It thus appears that it would not be impracticable to bring about an understanding between the ostensibly antipodal blocs of nations. While undue optimism would be unwarranted it would be unreasonable, and cynical, to assert that such a reconciliation would be impossible to effect.

Fortunately, the opportunity for which the peace-loving world has been waiting so long is manifest in the existing political conditions themselves. An unbiassed introspective study of international politics today will convince one that the frightened rival blocs want peace, if it can be assured.

Consequently the psychological and practical effect of the rival nations giving away their lethal weapons to an impartial international body as a gesture of their goodwill would be far-reaching and would help very meterially in bringing about conditions conducive to global security and stability which precondition World Government.

At the outset a mediating party between the two blocs would facilitate matters. Of course the mediator would have to be acceptable to both sides. The practical question would naturally arise : Which country would that be? Consistently India has advocated peace as the only solution to international discord. She could prove herself both prophet and sponser of the project. She has no selfish ends to gain ; neither side is averse to her. Once again, it appears, the time has come when India, playing the role of a modern Asoka, must teach the world the lesson of international amity. India should first stress upon the world by intensive propaganda the blatant absurdity of Armament Programme and the certainty that atomic war means cosmic suicide. Time is coming when Bharat will sponsor and establish a World Government based on love and rationalism.

At present the organization for a World Government is feasible. It should interfere as little as possible with the internal system of government in each country. The basic fallacy of Mr. Clarence Streit's 'Union Now' is the unrealistic assumption that the dominating force of today—Nationalism—can easily be abolished by writing a constitution, any constitution. "Before the World Parliament of Man there must first be the World Federation of Nations" (Ely Culbertson). Let, therefore, the Government of the World Federation first act as a Peace Trust to which each nation entrusts part of its sovereignty (the right to wage war) and receives in return a greater value (the right to be protected against aggression).

As already stressed the control of instruments of war must be made an international subject. Clearly this is only the beginning of a new stage. Later on should come the international control of raw materials, marketing methods and labour because after all wars arise chiefly from economic causes and cannot be prevented unless these forces are regulated. Already no state is allowed to have an independent fiscal policy, and a central monetary system has been established to avoid chaos. The adherence to collectivism or free enterprise need not be given up. It is essential to remember that use of force to solve international disputes will be disastrous.

As regards the structure of the World Government it would be an extension of the Federal principle secured by a harmonious relation between the governments of the seventy-odd sovereign nation states and the Government of the World Federation, that is, the establishment of an intermediate mechanism of Regional Federations. Each of these Regional Federations becomes both an operating unit within the World Federation and a cohesive force among the constituent member-states. These Regions should form natural, economic, psychosocial and geo-political units, and should be so arranged that there is a reasonable balance between agriculture, industry and raw materials. Each such unit becomes a Regional Federation with strictly limited powers. The U.S.S.R. could form one unit; the U.S.A. another; likewise there can be a Central Asiatic Federation with India, the Commonwealth, the United States of Europe, the Middle East ; and the Far East. Dependencies and mandated territories should come under the direct management of the World Government. They should be given autonomy in the shortest

possible time and thereafter integrated into the Region of their choice.

As for the permanent Government of the World Federation Culbertson's suggestion is perhaps not altogether devoid of value :

There would be a Legislature bi-cameral in nature. The Upper House would have six elected delegates from each Region representing in equal proportion capital, labour, agriculture, science, education (secular and religious), and arts (including crafts). The Lower House would be on a population basis, each Region being adequately represented. The tenure of the members would continue for a reasonable period, say four years in the case of the members of the Upper Chamber and two years in the case of the Lower House.

There would be an Executive of which the head, the President, would choose his own cabinet, and following the Parliamentary system hold office for six years.

A Judiciary will be necessary. We have already found its groundwork in the International Court of Justice and International Law. Under the new order, Regional branches of the International Court would be instituted in addition to there being one representative from each Region on the judiciary of the International Court of Justice.

It would be best to locate the capital of the World Federation on extra-territorial grounds within the sponsoring State. When the capital shifts the previous capital could be converted into an endowed world university. The disadvantages of moving the capital every six years would be more than balanced by bringing the World Federation into the heart of every Region and by periodically creating world centres of cultures.

But no abstract scheme of a World Federation will work "unless real world co-operation replaces both isolationism and imperialism of whatever form in the new interdependent world of free nations."

The U.N.O. took shape after two great world wars and in consequence of them. What has been the lesson of those global conflicts ? Surely it is that, "out of hatred and violence you will not build peace" (Nehru). In the modern pattern of closely knit and interdependent nations, with the vision of the hydrogen bomb looming large on the international horizon no country may even as a matter of selfish exigency risk the eventuality of war for that would imperial the very existence of mankind. If, indeed, humanity is not ultimately to revert to the life of the cave man it must discover itself in a world of peace and international brotherhood, a world spiritually, mentally and materially progressive,—a global order which can be evolved through international co-operation alone.

The nations of the world today are at the cross-roads and everything in this atomic age depends upon the course they choose to follow. There is, of course, the illusory road to annihilation. The only alternative course lies in taking example from India which has throughout the ages worked unceasingly towards the establishment not of Universal Empire . . . but Universal Peace (Ahimsa), peace between man and man, for it is clearly in that Indian cult of the spirit that nations, like individuals, will find happiness, prosperity and peace and realize "the democratic dreams of a World Federation or a Parliament of Man."

ANNUAL REPORT

OF THE

CALCUTTA UNIVERSITY LAW COLLEGE GYMNASIUM

1951–52

As the students are developing increased enthusiasm in physical culture, we would take this occasion to announce that we, the students of the University Law College have the proud privilege of possessing one of the most well-equipped gymnasiums in India. Further, we are glad that even this year we have added some more scientific instruments of new type.

It must be admitted that possession of robust muscles only is not the true test of a good physique. A man is said to possess good health when he is free from all diseases and at the same time full of vigour and stamina, which is possible only by the practice of Yogic 'Asanas'. We are happy to state that adequate fecilities have been provided in our gymnasium for practising Yogic 'Asanas' under the direct and constant supervision of our physical instructor, Sri Monotosh Roy, "Mr. Universe."

"BREAKING THE CHAIN"
by Sri Sachin Basak at the 27th Anniversary.

We further report that our gymnasium celebrated its 27th anniversary on the fifth of September, 1952. Among the distinguished guests present on the said occasion were, Sri P. K. Sen, I.P., J.P., Dy. Commissioner of Police, Prof. A. C. Karkoon, Vice-Principal of the University Law College, Dr. S. K. Gupta, Prof. B. Raichowdhuri, Prof-in-charge, Athlete section, Prof. R. M. Mazumdar, Prof. S. A. Masood, and others. The main object of the function was to perform Physical feats, Yogic Asanas, and "Tableau" along with back-ground music and dialogue, which was widely appreciated.

The Annual Body Building competition of our college was held on a novel method. The contest was divided under four heads, viz., (1) Body Building, (2) Best Physique, (3) Endurance and (4) Yogic Asanas. The respective results of which were as follows:-

Body Building :

Tapananshu Mukhopadhaya	...	1st.
Sachindra Nath Basak	...	2nd.
Debendra Nath Mukherjee	...	3rd.
Shankar Basu	...	4th.

Best Physique :

Champion—Tapananshu Mukhopadhaya.

Endurance :

Champion—Sachindra Nath Basak.

Yogic Asanas :

Arabinda Basu ... ... 1st.
Gobinda Lal Mukhoti ... 2nd.

In the coming year, however, we propose to add some more novelty in the conduct of the competition, and hope that with the co-operation of our fellow students, we would be able to succeed.

In conclusion, however, in view of the spacious accommodation and sufficient instruments in our gymnasium, we appeal to the students of our college to come in large numbers and to join the gymnasium and enjoy their health.

Sachin Basak,
Tapananshu Mukhopadhaya,
Joint Secretaries.

"In my youth," said his father, "I took to the law,
And argued each case with my wife;
And the muscular strength *which it gave to my jaw,*
Has lasted the rest of my life."

—Lewis Cerrol.

UNIVERSITY LAW COLLEGE ATHLETIC CLUB, OFFICE BEARERS FOR 1951-52

Standing (*L.* to *R.*)—Parsuram (Bearer), Dilip Sarkar (Captain, Badminton), Ashim Biswas (Captain, Hockey), Sachin Basak (Jt. Secy., Gymnasium), Tapanangsu Mukherjee (Jt. Secy., Gymnasium), Sanjib Dutta (Captain, Indoor Games), Manash Roy (Captain, Foot-ball), Sugata Basu (Captain, Cricket), Binoy Sarkar (Vice-Capt., Cricket), Brojen Saha (Vice-Capt , Foot-Ball), Gonobari (Bearer).

Sitting (*L.* to *R.*)—Ranjit Biswas (Jt. Secy.), Amulya Mukherjee (Capt., Sports), Mani Misra (Jt. Secy.), Prof. A. C. Karkoon (Vice-Principal), Sri S. N. Banerjee (Vice-Chancellor), Dr. P. N. Banerjee (Principal), Dr. B. Roy Chowdhury (Prof-in-Charge of Games), Sri Monotosh Roy (Physical Instructor), Amar Banerjee (Jt. Secy).

ANNUAL REPORT

OF THE

UNIVERSITY LAW COLLEGE ATHLETIC CLUB

1951–52

We are proud to present this annual account of activities of the University Law College Athletic Club, and to be able to report its continued development and progress in the year under review. Maintaining its old reputation and standards of achievement, this institution kept the banner of our College flying in all important sectors of University sports and athletics.

The Cricket team, under the captaincy of Sri Sugata Basu, brought us perhaps the most glorious laurels. The season actually did not begin on a very promising note, and in the newly-instituted University Inter-Collegiate League, we suffered a most unexpected defeat. But later in the season, we made up the early set-back and went on to win the S. Roy Memorial Challenge Shield, by defeating Ashutosh College in a three-day match at the hallowed Eden Gardens, thus emerging as the University Inter-Collegiate Knock-out Champions for

OUR INTER-COLLEGIATE BASKET-BALL CHAMPIONS

L. to R. Standing—**G. Ramaswamy, Aloke Dey, S. Banerjee (Coach), K. G. Antony, K. M. Matthew.**

Sitting—**Parasuram (Bearer), P. C. Ninan, P. M. John (Captain), Preman Kuruvila.**

the year. But even more creditable was our ten-wickets victory in the semi-final match over Vidyasagar College, who had been holders of the trophy since its inception. This, by the way, was our second successive entry into the final of this tournament.

On becoming the University Champions, our cricketers were invited to Jalpaiguri by the local Town Club to play a match against a side picked out from the cream of North Bengal Cricket. This proved to be a most successful tour, for we beat our opponents convincingly by seven wickets. But not the least enjoyable part of it was the trip to an important Tea Estate in the Dooars, where we were guests of the President of the Jalpaiguri Town Club. We take this opportunity of recording our deep appreciation of the generous hospitality shown us there.

The secret of our cricketers' success lay in their wonderful teamwork and cheerful optimism under all conditions. Sri R. Mukherji was a most able and all-round performer, while the skipper himself, along with Messrs. R. Sen, M. Shah, M. Roy, S. Ghosh and many others, did notable service. Messrs. R. Sen and R. Mukherji were selected members of the Calcutta University Team in the Rohinton-Baria Tournament.

The Football team, under the leadership of Sri Jatin Barua, acquitted themselves creditably in the University Tournaments. Our former Captain, Sri R. Guha Thakurta, was chosen a member of the Indian Football Team that went up to Helsinki for the XV Olympiad. We are proud to associate him with us, and our sincerest congratulations go to him on his achievement of this unique honour. Messrs. Mihir Roy, M. Misra, and B. Kumar were the other notable players of our team, which also made a happy trip to Krishnagar.

The Hockey team, captained by Sri Manas Roy, performed meritoriously, if not brilliantly, with Messrs. J. Barua, R. Mukherjee and S. Sen who may be mentioned as outstanding in the side that took part in Inter-Collegiate events.

The previous year's star performer, Mr. P. M. John, led our Basket-ball team to championship in the Inter-Collegiate League. This was our second success in two years. Besides the captain himself, Messrs. J. Barua and A. Dey put up a great display.

Coached by Sri Monotosh Roy (Mr. Hercules), Messrs. Tapananshu Mukherji and Sachin Basak of our college were the winners of the University Body-Building Competition. Cricket, Basket-ball and Body-Building thus fetched for us the triple-crown in University events, and to the members of these teams we offer our felicitations.

The College also participated in the Inter-Collegiate Tennis and Volley-ball Tournaments, and entered teams for competitive indoor games, like Badminton and Table-tennis, the players in all cases giving encouraging performances. The Rowing team, also played their part in the all-round development of the Law College Athletic Club.

With a goodly number of entrants, the Annual Sports came off successfully at the University ground, Sri Shyamdev Adhikari capturing the individual honours. In the Professors' Race, Sri R. C. Pal romped home to take the first place, with Mr. S. A. Masud a good second. The Ladies' events, unfortunately, drew no competitors.

The outstanding individual achievement of the year was that of Sri Manas Roy, who stole all the limelight at the Prize-Distribution ceremony. He was awarded the 'Triple-Blue' for proficiency in Cricket, Hockey and Foot-ball. Sri Roy has achieved the great distinction of captaining these three of our main teams at one

time or another in the past years which is perhaps, a record for this College.

Before we conclude, may we take this opportunity of thanking Messrs. Benoy (Phadkar) Sarkar, Ashim Biswas and a host of others from among our fellow-students, for lending us their unfailing co-operation in bringing about the year to a successful close. Our thanks are also due to our Principal, Vice-Principal and Professors, Masud, Roy Chowdhury and Mukherjee for the untiring encouragement they were always ready to offer, and which we earnestly hope will be continued to be given to us in the years to come. We are no less grateful to Sri Mrityunjay Basu and Sri Sribhusan Mitra for their assistance and guidance, whenever we were in need of them. To all these gentlemen, much of the credit for our success is due.

Amarnath Banerji
Mani Misra
Ranjit Biswas

Jt. Secys. C. U. Law College,
— Athletic Club.

"The main issue in life is not the victory but the fight;
The essential is not to have won but to have fought well."

RE-UNION ADDRESS BY THE GENERAL SECRETARY

ON

23rd August 1952

Mr. President, Honoured Guests, Fellow Students, Ladies and Gentlemen.

We have assembled here drawn by the ties of common association. We bring with us our greetings and good wishes. This happy occasion stirs the recollection and sentiment of attachment for the past ; moreover, it kindles our hopes for the future. It is not possible on my part to express in words the feelings and sentiments, which your presence in our midst evokes. Today I have the privilege of addressing you on behalf of this Union which is the premier College Union of India and which has always maintained its prominence. We meet here today for the tenth time since the Annual Re-Union function commenced in 1942-43.

On this happy occasion we recall the services which this institution has rendered, not only to the legal profession but to the public in general ; lawyers in short are social engineers. Lawyers have led our country for the last 50 years and still they are giving lead to us remaining in forefront, and it is our pride that most of them, specially of this state, have been connected with this institution.

It is also inspiring for us to recall to our mind the names of the great personalities this institution has produced and the great men who were once students like us of this college. Dr. Rajendra Prasad, the first President of the Indian Republic was a student of this institution and was also a member of its tutorial staff. So we being their successors have got enough reasons to boast of the greatness of our college. It is really a privilege for us—the students of this college—to meet you, the ex-students of this institution. This assemblage not only helps to remind us about the distinguished ex-students of this college but inspires us to build our future. This Re-Union meeting once a year is probably the only opportunity we get of coming in contact with the experienced lawyers and this is the only occasion when students get some ideas of their future life by knowing them.

Our speakers here today are well-known but I deem it my duty to say something about them.

I consider it superfluous to introduce Sri Pareshnath Mukherjee, our President of the function today. He is far too well-known as a reputed judge of the Calcutta High Court and moreover, he was an ex-student and a member of the tutorial staff of our College. We are very glad in getting him amongst us on this happy occasion.

Our Honoured Chief Guest is a pride of our country. Dr. R. B. Pal is not only a great jurist but he has recently been appointed as a member of the International Law Commission.

I will ask you Mr. President, Ladies and Gentlemen, to join me in congratulating ourselves on securing the presence of the Hon'ble Justice Sri S. N. Guha Roy, Sri S. K. Basu, Judicial Minister of Government of West Bengal, Sri I. D. Malan, Local-Self Government Minister, West Bengal and other notable personalities.

Professor Ramendramohan Majumdar, the President of the College Union is once again with us and inspite of his ill-health he is taking all the pains to make all the functions of this Union successful.

It was the custom of the General Secretary to read a report of the Union activities at the Re-Union meeting. It was within the scope of the General Secretary then, to do so, because the Re-Union meeting was held at the end of his annual term of office. Due to the riots, the election of our union was delayed in 1946 and since then the delay in election is continuing year after year.

On the assumption of our office this year we requested our college authorities to extend the library hours for the benefit of the evening students. Our College authorities have been kind enough to accede to our request from this year which was really a longstanding need of the evening students. Before the annual budget of the college we also met and requested our Principal to manage publishing the synopses of lectures which had been dropped for the last few years. The Governing Body of this college was kind enough to sanction a sum of Rs. 4,000/—for that purpose and we hope the synopses of lectures will be published very soon.

On the 7th August, 1952 (Baishey Sravan) our Cultural Secretary took initiative to observe Tagore's Death Anniversary in which Professor Saroj Das was present. The teaching staff and the students of this college paid their respect to the memory of the great soul.

On the 11th August, 1952 the Debate Secretary organised an Inter-class Debate (both morning and evening section separate) the standard of which was really high.

During this session we have organised besides these functions, our Legal Conference at the Asutosh Hall at 3-15 p.m. on the 30th August, 1952. The Hon'ble Mr. Justice Bijankumar Mukherjea of the Supreme Court of India very kindly consented to preside over the Conference and other well-known speakers also consented to deliver speeches on different legal topics. We are also holding an Exhibition Debate on the 6th September, 1952 in the Asutosh Hall in which many distinguished debators of the Calcutta University will participate. On the 17th September, 1952 we are having our Break-up Social on the closing day before the ensuing Pooja holidays. Our College Magazine will be published very soon. I request all students, ex-students and other distinguished lawyers to contribute articles to our College Magazine. By the end of our term we will have our Annual Social and Drama and we will disburse Students' Aid Fund for giving relief to the deserving students of this College.

I deem it out of place to discuss the present political and economical conditions of our country.

In conclusion, Mr. President, Honoured Guests, Ladies and Gentlemen, I would like to thank you from the depth of my heart for your participating at this gathering.

We have arranged songs, instrumental music and carricature by our students, present and past, and we have also got among ourselves nearly half a dozen renowned songsters and artists of Calcutta. The musical demonstration will also be made by a Professor Morris College, Lucknow.

I would be doing injustice to the workers of this Union if I do not mention that without their ceaseless efforts it would not have been possible for us to assemble here on this happy occasion.

I thank you once more, Mr. President, Honoured Guests, Ladies and Gentlemen.

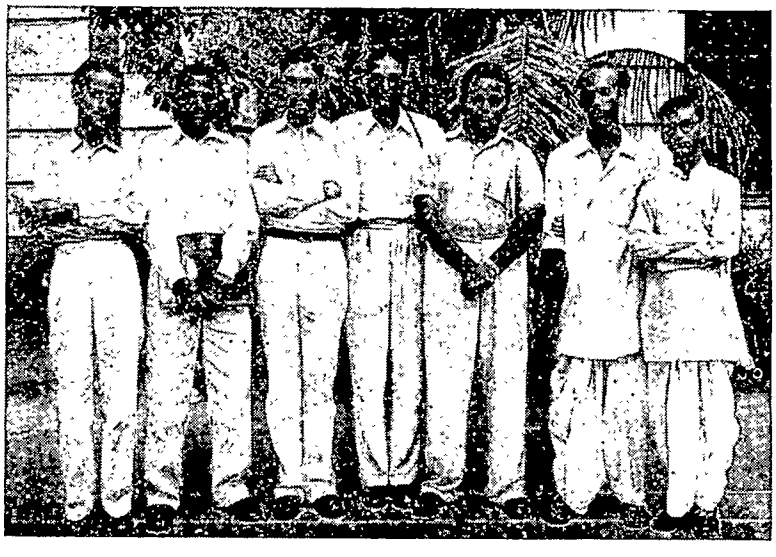
A. K. Saha.

Ourselves

We owe an apology to our readers, and well-wishers for the unusual delay in the publication of our College Magazine. Unlike some previous years the Union has not been able to arrange any function before the Summer Vacation and as a natural consequence of the union election being held later we had to commence the usual union functions and perform our extra-academical activities from the month of August, 1952.

Just after the election was over, our elected General Secretary, Sri Sahadeo Misra, had to retire as he completed his LL.B. course. The responsibilities of the General Secretary then fell on Sri Amal Krishna Saha,—responsibilities that were heavy enough. He tried his best to come out of the woods and did all he could do with the co-operation of the Joint Secretaries, Working Committee members and the students in general.

During the period under review we had our Professor Sri Ramendramohan Majumdar as President and three other Professors Sri B. K. Basu, Mr. S. A. Masud and Sri P. C. Chunder as Vice-Presidents. All of them are keenly interested in our Union activities and they are very popular among our students. We extend our warmest congratulations to all of them.



OUR DEBATORS WITH THE GENL. SECY. & DEBATE SECY.
L. to R.—**A. Saha (G.S.), M. L. Jhunjhunwala, R. K. Anand, S. N. Dasgupta (Debate Secy.), S. Dasgupta, M. Sengupta, J. Sen.**
Absent—**S. S. Mahapatra & M. Mukherjee.**

* * * *

Annual Re-Union

We had our Annual Re-Union of the present and past students with Dr. R. B.

Pal, a great Jurist of our Country and a member of the International Law Commission, as the Guest-in-Chief. The function was held in the University Institute Hall on the 23rd August, 1952. Hon'ble Mr. Justice P. N. Mukherjee of the Calcutta High Court presided over the function. The Hon'ble Mr. Justice S. N. Guha Ray, Sri S. K. Basu, Judicial Minister, West Bengal, Sri I. D. Jalan, Minister, Local Self-Government, West Bengal and other notable personalities including many ex-students of our College graced the occasion by their presence. Like our predecessors of the previous year, this year also efforts were made to contact the Ex-students of the College through the press and by approaching individual members of the Bar Libraries. This year also four members among the ex-students were appointed members of the Re-Union Sub-Committee and their services were of immense value. The function was really a happy gathering for every one assembled and the function came out with splendid success.

* * * * *

Annual Legal Conference

The Annual Legal Conference was held in the Asutosh Hall on the 30th August, 1952 with the Hon'ble Mr. Justice B. K. Mukherjea of the Supreme Court of India, in the Chair. It was a successful conference participated by eminent Lawyers of the State and their learned discussions on different legal subjects and problems revealed new avenues to their solutions. The Speakers of the day were the Hon'ble Mr. Justice B. K. Mukherjea who spoke on 'Law and Lawyer', Sri S. M. Bose, Advocate-General of West Bengal on 'Company Law', Prof. Hirendra Mukherjee, M.P. on 'Democracy through Parliament', Sri Sankar Banerjee, Standing Counsel, on 'Prohibitive writs', Dr. S. C. Chaudhury, Principal, S. N. Law College, on 'Legal Education' and Sri Bhupesh Gupta, M. C. on 'Preventive Detention'. The speeches delivered were instructive and illuminating and were universally appreciated.

* * * *

Debates

Next, we must thank our debators, Messrs. Shyamsundar Mahapatra, Mihir Mukherjee, Sudhangsu Dasgupta, Mrinal Sengupta, R. K. Anand, M. L. Jhunjhunwala, Jahar Sen, Sreepal Senadheera, J. N. Mazumdar and others, who have, on all occasions, extended their sincere co-operation and have raised the dignity of our *Alma Mater*.

On 11th August, 1952, we organised an Inter-Class Debate for both morning and evening sections separately in which Sri Mrinal Sen Gupta and Sri J. N. Majumdar stood first and second respectively from the morning sections and from the evening sections Sri Shyamsundar Mahapatra and Sri Sripal Senadheera stood first and second respectively. On 6th September 1952, we organised an Exhibition Debate in which almost all the leading student-debators of our University took part. Our ex-student Sri Sadhan Gupta, Bar-at-Law moved the resolution. Our Vice-Principal, Sri A. C. Karkoon, presided over the function. On 29th January, 1953, we held another Exhibition Debate with the members of the British Debating Team which visited our country very recently. They appreciated the debate and spoke highly about our debators. Our Principal Dr. P. N. Banerjee presided over the debate. We held our Inter-class Debate on 24[illegible]ry, 1953. The Trophy was [illegible] Year Class, represe[illegible]-wala and [illegible] dual firs[illegible]

Gupta of the Second Year Class and the second prize to Sri R. K. Anand of the First Year Class. We are also organising the All-Bengal Debate very soon. The date has been provisionally fixed for 19th March, 1953.

This year our College Debate team has won the Trophy from the Inter-Collegiate Debate Competition organised by the Calcutta University Institute. The team consisted of Sri Mihir Mukherjee and Sri Jahar Sen. A team consisting of Sri Sudhangsu Das Gupta and Sri R. K. Anand participated in the All-India Debate held under the auspices of the Lucknow University Union. There Sri Dasgupta stood first and secured the first prize as the best speaker.

* * * *

Social and Drama

This year again for the second time we arranged for a Break-up Social on the closing day of the college before the last Puja Vacation. A drama 'Baikunther Khata' by Rabindranath Tagore was staged by our students on the occasion. It was performed on the 17th September, 1952, in the presence of a distinguished audience. The evening was well spent and some renowned musicians of the city delighted the guests. We are proud to say that the function was a successful one. We are going to celebrate our Annual Social very soon and the date has been provisionally fixed for 21st March, 1953.

* * * *

Students' Aid Fund

A Students' Aid Fund has been opened in the last year for giving economic relief to the needy meritorious students of our [illegible] also like the previous [illegible] a sum of Rs. [illegible] help encouraging many needy students of law to complete their studies.

* * * *

College Forum

To provide the students of our college with a venue for the expression of their talents, our Wall Paper is being regularly published from the beginning of this session. We are thankful to our students from whom we are getting response from time to time but we still need greater response.

* * * *

Cultural Functions

On the August, 1952 (*Baishey Sravan*) we observed Tagore's Death Anniversary to pay our homage and respect to the memory of the Great Soul. Professor Saroj Das, Calcutta University presided over the function. The function was neat, nice and enjoyable.

* * * *

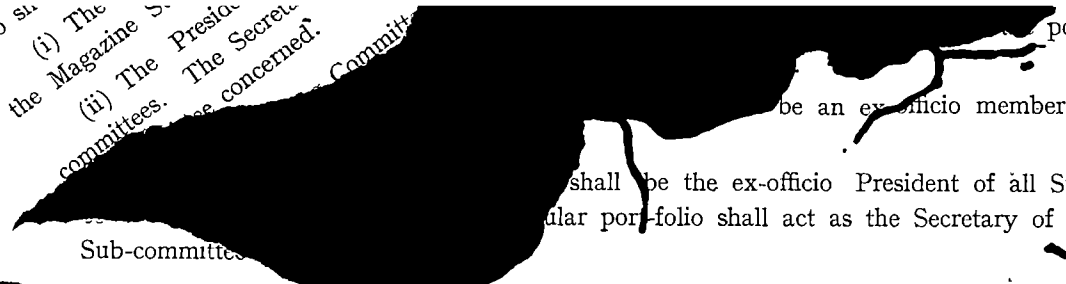
External Affairs

In this session we have been able to establish relationship with the leading law colleges in India to foster goodwill, comradeship and mutual understanding and we are sure this will of greater use and benefit in future.

* * * *

Social Services

We are glad that we contacted the various medical institutions in the city and suburbs to extend relief to the indigent Student patients. We also tried to sell T. B. seals issued by the Tuberculosis Association. Still there is a lot to be done in this section. Our hands were tied due to shortage of funds. We believe we shall be able to render greater services in future.



port-

be an ex-officio member of

shall be the ex-officio President of all Sub-

ular portfolio shall act as the Secretary of the Sub-committe

30. The Working ...tee meeting shall ordinarily be convened by the General Secretary on 3 days' notice. One-third of the members of the Working Committee shall form the quorum. The General Secretary may call an Emergency Meeting on a 12 hours' notice for extraordinary reasons.

31. A notice of a meeting in all cases be served by personally handing over the same to the members concerned or in the alternative by posting the same to the last known address of the member concerned. In the event of the time being too short to serve in the aforesaid manner, a notice duly signed by the General Secretary or the President, shall be hung on the notice board and shall be circulated in the classes.

32. During the last month of the session, the Working Committee shall appoint a Sub-committee named as Election Committee consisting of the President, a Vice-President, the General Secretary who shall be the convener, the Assistant General Secretaries and two other members of the Working Committee. The direction, prepation and conduct of the elections of (a) the Central Council, (b) the members and office-bearers of the Working Committee as provided aforesaid.

33. Notice of the election shall be served in each class by the General Secretary on behalf of the Election Committee at least a week prior to the polling.

Provided that the Working Committee shall arrange likewise election of two representatives subsequently from each new class which had not commenced at the time of the general election.

34. Names of the candidates must be duly proposed and seconded by the students of the same section in the form prescribed and issued by the Election Committee.

35. In all elections under this constitution, any substantial misdescription identity of the candidate for election shall render the candidature of the person invalid.

(i) Other rules or procedure prescribed by the Election Committee if not followed in the application form shall render it invalid.

(ii) Not more than one candidate shall be proposed for the same office or same membership by the same member.

36. Any election regarding which a dispute arises, may be set aside by the Election Committee within a reasonable time and the Election Committee shall a fresh election to take place at the earliest possible time.

(i) The President or the Convener of the Election Committee may suspend election

of a[illegible] ...ndidate. ...ut to cast two
that case to the [illegible]on ...siding officer and his
...onded, may ... ...ction of the class, unless
...arted

37. Each student mem[illegible]
votes provided that no voter sha[illegible]ast mo[illegible]

38. The Professor of each clas[illegible]/sec[illegible]
decision is final in all matters relating to the e[illegible]
such decision is set aside by the Election Com[illegible]

39. Any candidate, when duly proposed a[illegible] ...withdraw verbally or in writing from the election, before the polling is st[illegible]

40. Ballot paper shall be distributed by the Election Committee or its duly authorised representatives in presence of the presiding officer.

41. The presiding officer shall count the ballot papers immediately after the voting power is exercised in the presence of the candidates or the agents provided that the presiding officer may reject any ballot paper, found to be improper and/or contrary to the rules issued by the Election Committee.

42. The new Central Council convened by the Election Committee shall be presided over by the Principal or Vice-Principal as the Chairman of the meeting for the purpose of the election of the Working Committee.

In absence of the Principal or the Vice-Principal, the outgoing President shall preside over the said meeting.

43. Every candidate for the election of the Working Committee must be duly proposed and seconded by members of the Central Council, other than the particular candidate.

44. The election of the office-bearers and members of the Working Committee shall be held in accordance with the Ballot system. Each member of the Central Council has the right to cast one vote for the office of the General Secretary, two votes for the office of the Assistant General Secretary and ten other votes for membership of the Working Committee.

45. Any candidate may withdraw from the contest verbally or in writing before the commencement of the polling.

46. The Central Council, the Working Committee, or the office-bearers shall cease to function with the close of the session, provided that the Election Committee may continue to act until a new Working Committee is constituted, provided further, that the President, Vice-Presidents, General Secretary, Asst. General Secretaries shall function till their successors are appointed.

47. The Central Council, the Working Committee or the Election Committee have power to frame rules, bye-laws not contravening the Constitution.

48. An amendment of the Constitution may be effected in a meeting of the Central Council provided that—

(i) a fortnight's notice be given to the members of the council and

(ii) the meeting is attended by two-third members of the Central Council, and

(iii) the two-third members present in the meeting agree to such amendment.

(iv) To establish friendly relationship among the present and the past students of the College.

(v) To devise ways and methods of social and economic welfare of the country and to work accordingly.

(vi) To encourage the growth and development of personality of students through sports, physical exercises, debates, magazines, symposiums, legal conferences, study centres, forums, rural welfare schemes, poster exhibitions, films, social functions, good-will missions, and other progressive measures.

4. Every student is a member of the Union.

5. The Principal and the Vice-Principal of the College are the patrons of the Union and every member of the teaching staff shall be honorary members of the Union.

6. The College Union session will commence every year on the 1st of March and terminate on the 28th or 29th February on the following year.

7. Every student member shall pay a sum of Rs. 5/- at the commencement of the College session, as the annual subscription.

8. There shall be a Council styled as "The Central Council of the Law College Union", consisting of elected representatives of sections of different classes of the College and Professors co-opted under Art. 11 hereunder.

9. Each section of different classes of the College shall elect two representatives to the Central Council.

10. The election of the Central Council shall ordinarily be held in the month of February of the session of the College Union.

11. The Central Council shall meet within 7 days after the election and shall proceed to constitute the Working Committee in this meeting by co-opting 4 members of the teaching staff, after their names duly proposed and passed in the said meeting of the Council, by electing amongst its members the following office-bearers and members of the Working Committee :

(i) One President who shall be a Professor of the College.

(ii) Three Vice-Presidents who shall be Professors of the College, one of the Vice-Presidents shall be elected by the Central Council to be the Treasurer of the Union and another Vice-President shall be elected to be the Editor-in-Chief of the College Magazine.

(iii) One General Secretary.

(iv) Two Assistant General Secretaries—one of whom shall be in charge of office and accounts to be selected by the Working Committee.

(v) Ten other members of the Central Council.

12. The Working Committee so constituted shall meet within 5 days to elect the following Secretaries from amongst its own members :

(i) One Secretary in charge of Social & Drama

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Our Union Constitution

We are glad to publish the Amended Constitution of our College Union for information of our general students. A "Constitution Amendment Committee" was formed on the 13th September, 1952 consisting of the persons mentioned below. The Committee invited suggestions from the students and it presented the Draft Constitution on the 20th February, 1953 before the Working Committee of the Union. The Draft Constitution was approved by the Working Committee on the 20th February, 1953 with minor amendments. Finally, the Draft Constitution, as moved by Sri M. L. Jhunjhunwala and seconded by Sri Amal Saha, was adopted unanimously by the Central Council of the Union on the 21st February, 1953. On the same day, an "Election Committee" was formed with the following persons as members to conduct the Elections for the ensuing session of our Union.

Members of the Constitution Amendment Committee :

1. Professor R. M. Majumdar
2. ,, S. A. Masud
3. ,, B. K. Basu
4. Sn Amal Saha (Convener)
5. ,, Bidhan Maulik
6. ,, S. N. Dasgupta
7. ,, M. Sengupta
8. ,, Asoke Mitra

Members of the Election Committee :

1. President—Sri R. M. Majumdar
2. Vice-President—Mr. S. A. Masud
3. General Secretary—Sri Amal Saha
4. Sri Bidhan Maulik
5. ,, Ajit Chatterjee
6. Mr. Sajjad Ali
7. Miss. Jyotsna Das

Constitution of the Calcutta University Law College Union

1. The name of the Union is "The Calcutta University Law College Union.
2. The office of the Union will be situated at the College building.
3. The aims and objects of the Union may be stated as follows :—
   (i) To foster goodwill, friendship, and the growth of corporate and cultural life among the students in the College.
   (ii) To facilitate personal contact and closer association among the teachers and the students of the college.
   (iii) To promote fellow-feeling, comradeship and exchange of ideas and thought among students of India and foreign countries,

2[illegible] the office-bearers, the General Secretary shall present the [illegible]al [illegible]n before the Central Council, after the same is passed by the Work[illegible]e budget will be enforced on the approval of the Central Council.

22. The fund of the Union shall remain in charge of the treasurer who shall make payment of any sum to the General Secretary on the authority or the resolution of the Working Committee. The General Secretary in consultation with the Assistant General Secretary in charge of the Office shall prepare the statement of the accounts.

All monies are to be paid to the General Secretary who shall be held responsible jointly and severally with the Secretary in charge of the particular port-folio in respect of which the money is advanced.

23. The Working Committee may meet to discuss and devise the ways and means to carry out all the affairs of the Union. Such meeting shall be convened by the General Secretary.

24. The General Secretary of the Union shall within 7 days of the receipt of a requisition stating the business to be transacted and signed by Ten members of the Central Council of the Union, call a meeting of the Council.

If the General Secretary fails to call the meeting required by the requisition, the requisitionists may themselves convene the meeting of the Council after giving 3 days' notice.

The General Secretary shall also within two days of the receipt of the requisition stating a clear agenda for the meeting and signed by at least 5 members of the Working Committee, call a meeting of the Working Committee failing which the requisitionists may themselves convene the meeting of the said Committee after giving 24 hours' notice.

A resolution of such requisition meeting is deemed to be a resolution of the Central Council or the Working Committee, as the case may be.

25. The minutes and proceedings of every meeting shall be properly recorded by the General Secretary and confirmed in the next meeting.

26. The President of the Union shall be the President of the Working Committee. In the absence of the President, the seniormost Vice-President present in the meeting shall have all the powers and the privileges of the President. The President shall be the final authority in interpreting the Constitution and in deciding matters, not covered by it.

27. In absence of the General Secretary due to any reason whatsoever, the Asst. General Secretary in charge of the Office shall act in place of the General Secretary and he shall enjoy all the rights and privileges of the General Secretary.

28. The General Secretary shall supervise and exercise control over the Secretaries. In the event of a difference of opinion between the General Secretary and the retary or Secretaries, the decision of the Working Committee is final.

29. The Working Committee shall form various Sub-Committees consisting of seven members including the ex-officio members to facilitate the work of the Union.

(ii) One Secretary in Charge of Re
(iii) ,, ,, ,, ,, ,, De
(iv) ,, ,, ,, ,, ,, Ma
(v) ,, ,, ,, ,, ,, Cultural & [illegible] Conference
(vi) ,, ,, ,, ,, ,, Students' Aid Fund.

Provided that the Working Committee may increase the number of Secretaries if it thinks necessary. Provided also that the Central Council may add a new office or abolish an old one with the assent of two-third members present in the meeting.

13. (a) An ordinary meeting of the Central Council shall be called by the General Secretary on a 3 days' notice to its members.

(b) An Extra-Ordinary Meeting of the Central Council may be called by the General Secretary in case of emergency, provided 24 hours' notice be given with a clear agenda.

14. One-third of the members of the Central Council shall constitute the quorum of the meeting.

15. The Central Council shall exercise a general control and supervision over all affairs of the Union.

16. The Working Committee shall be entrusted with the entire administration and management of the affairs of the Union and shall, in particular, be responsible for the budget, accounts, election and introduction of the policies of the Union.

17. Any decision or resolution of the Working Committee may be altered, amended, or repealed by the Central Council, provided such alteration, amendment, or repeal is passed by two-third members of the Council.

18. (a) Any vacancy in the Working Committee caused by a member's death, illness, resignation or otherwise, shall be filled up by the Working Committee from among the members of the Central Council.

(b) Similar vacancy in the Central Council caused by death, illness, resignation or otherwise shall be filled up by the Central Council.

19. Students who complete their course of study or cease to be students of the college for any reason whatsoever shall be deemed to have ceased to be members of the Union forthwith.

20. A no-confidence motion may be passed against a member or members of the Working Committee or office-bearer or office-bearers provided such resolution is approved by two-third members of the Central Council.

Provided further that such resolution will not be placed before the Central Council, unless approved by two-third members of the Working Committee.

In case the no-confidence resolution is not approved by two-third members of the Working Committee, any member of the Central Council is entitled to move such resolution at a special meeting of the Council to be called for this purpose and if the said resolution will be passed on approval by three-fourth members of the Central Council.